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K-12 Education: Implementation Status of the No Child Left Behind Act of 2001 (P.L. 107-110)

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Summary

The No Child Left Behind Act of 2001 (NCLBA) amended and extended programs authorized by the Elementary and Secondary Education Act of 1965 (ESEA). Among other things, the NCLBA expanded requirements for the use of standards and assessments to measure student academic achievement, and it strengthened state, local educational agency (LEA), and school accountability provisions related to student achievement and other outcomes. This report summarizes the provisions and the implementation status to date of several major NCLBA requirements as they relate to specific NCLBA programs, and it examines some of the implementation issues that have arisen as a consequence of these new requirements. This report is divided by topic into eleven sections, following the sequential order (to the extent feasible) of NCLBA provisions. Although the report may be read in its entirety, each section is written to stand alone to assist readers who may elect to read only about topics of particular interest.

Section 1 of the report examines new standard and assessment requirements contained in Title I-A of the ESEA as amended by the NCLBA, as well as how these new requirements build upon preexisting requirements, and the timeline for their implementation. Section 2 focuses on new requirements regarding the National Assessment of Educational Progress (NAEP) adopted by the NCLBA. Section 3 addresses the implementation of adequate yearly progress (AYP) requirements adopted in the NCLBA. Section 4 looks at the outcome accountability requirements included in the NCLBA. Section 5 examines NCLBA changes to ESEA provisions regarding the education of limited English proficient (LEP) students. Section 6 discusses NCLBA changes regarding teacher quality issues. Section 7 focuses on the Reading First program, newly authorized by the NCLBA. Section 8 discusses NCLBA changes that strengthen parental involvement requirements. Section 9 addresses NCLBA provisions requiring LEAs receiving funding under the ESEA to provide military recruiters with the same access to secondary school students that they provide to institutions of higher education or prospective employers. Section 10 addresses NCLBA changes to ESEA requirements applicable to the participation of children enrolled in private schools. Section 11 discusses the unsafe school choice option established by the NCLBA.

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Introduction

The No Child Left Behind Act of 2001 (NCLBA) amended and extended programs authorized by the Elementary and Secondary Education Act of 1965 (ESEA). Among other things, the NCLBA expanded requirements for the use of standards and assessments to measure student academic achievement; and it strengthened state, local educational agency (LEA), and school accountability provisions related to student achievement and other outcomes. This report summarizes the provisions and implementation status to date of several major NCLBA requirements as they relate to specific NCLBA programs, and it examines some of the implementation issues that have arisen as a consequence of these new requirements. This report is divided by topic into eleven sections, following the sequential order (to the extent feasible) of NCLBA provisions. Although the report may be read in its entirety, each section is written to stand alone to assist readers who may elect to read only about topics of particular interest. Selected issues raised in each section are briefly highlighted in the following synopsis.

Section 1 of the report examines new standard and assessment requirements contained in Title I-A of the ESEA, as amended by the NCLBA, as well as how these new requirements build upon preexisting requirements, and the timeline for their adoption. Section 1 also addresses two major questions regarding the implementation of standard and assessment requirements: what is the additional financial cost borne by states as they implement the newly required annual assessments in additional grades and incorporate new standards and assessments at three grade levels in science; and what are the potential educational costs and benefits of these changes?

Section 2 of the report focuses on the National Assessment of Educational Progress (NAEP), a federally funded series of assessments of the academic performance of elementary and secondary students in the United States. The NCLBA includes a new requirement that states wishing to remain eligible for grants under ESEA Title I-A participate in biennial state NAEP tests in 4th and 8th grade. Section 2 addresses three implementation issues: will these new requirements increase the influence of NAEP on state standards and assessments; will problems arise as a result of the new mandatory requirement for participation of states, but continuing voluntary participation of pupils; and can NAEP results be used to “confirm” state test score trends?

Section 3 of the report addresses the implementation of adequate yearly progress (AYP) requirements that were made more challenging under the NCLBA. The primary purpose of AYP requirements is to serve as the basis for identifying schools and LEAs where performance is inadequate, so that these inadequacies may be addressed, first through provision of increased support and, ultimately, through a variety of “corrective actions.” The NCLBA requires states to make concrete progress toward meeting an ultimate goal of all pupils reaching a proficient or advanced level of achievement within 12 years. Some of the implementation issues discussed in Section 3 include whether the Department of Education’s (ED) reviews of state AYP policies are rigorous, transparent, appropriate, and consistent; whether the goal of all students reaching a proficient or higher level of achievement within 12 years will lead to states weakening pupil achievement standards; whether “too many” schools and LEAs are failing to meet AYP goals; whether the wide variations in state standards for pupil achievement are undermining AYP provisions; whether some states are effectively excluding some disadvantaged pupil groups from being considered in school-level AYP determinations by setting minimum group sizes for these pupil groups too high; and whether the NCLBA requirement for disaggregation of pupil groups in AYP determinations makes it too difficult for schools or LEAs with diverse populations to meet AYP standards.

Section 4 of the report looks at new outcome accountability requirements established in the NCLBA. LEAs and schools are being held to higher accountability standards under the NCLBA. This section discusses in detail the system of rewards and sanctions that has been established to hold Title I-A schools and LEAs accountable for their performance. Some of the implementation issues discussed in Section 4 include the impact of ED’s approval of changes in state accountability plans; difficulties that have arisen in implementing the requirement that students attending schools identified for school improvement be provided public school choice; and difficulties that have arisen in the implementation of the requirement that students attending schools identified for a second year of school improvement, corrective action, or restructuring be offered supplemental educational services.

Section 5 of the report examines NCLBA changes to ESEA provisions regarding the education of limited English proficient (LEP) students. Among other things, the NCLBA changed two grant programs for LEP students from competitive grants to formula grants, and it added new assessment and accountability provisions, including requirements regarding English language assessments. Implementation issues that have arisen include the effect on states of year-to-year fluctuations in funding under the newly adopted formula grant programs, the shortage of qualified bilingual teachers, and difficulties in meeting the new requirements for English language assessments.

Section 6 of the report discusses NCLBA changes regarding teacher quality issues. Major changes include a requirement that all teachers be highly qualified by the end of the 2005-2006 school year, and the replacement of the ESEA Eisenhower Professional Development and Class Size Reduction programs with a new Teacher and Principal Training and Recruiting Fund. One implementation issue concerns the scope and application of the highly qualified teacher requirements (HQT), the meaning of some of the HQT requirements, and the ability of different kinds of districts to meet them. A second implementation issue concerns the impact of

enhanced flexibility in the new Teacher and Principal Training and Recruiting Fund. Concerns have been raised that this may result in a shift away from the emphasis on math and science professional development in the Eisenhower program.

Section 7 of the report focuses on the Reading First (RF) program. The RF program was newly authorized by the NCLBA. The program is intended to incorporate the latest scientific understanding of what works in teaching reading to improve and expand K-3 reading programs to address concerns about student reading achievement and to reach children at younger ages. Implementation issues that have arisen include criticisms by some of the perceived “overprescriptiveness” of the RF program as it has been administered, perceptions of insufficient transparency regarding ED’s requirements of states, and allegations of conflicts of interest between consultants to the program and commercial reading and assessment companies.

Section 8 of the report discusses NCLBA changes that strengthen parental involvement requirements. Examples of these changes include new requirements for school-parent compacts, a requirement that 1% of LEA Title I-A grants be set aside for parental involvement activities, and a requirement that states and LEAs participating in Title I-A provide aggregate assessment results and certain other data to parents and the public through report cards. National studies on implementation issues of current parental involvement provisions are not yet available. However, studies of previous parental involvement requirements found that 25% of Title I-A schools had not implemented school-parent compacts, that parents remained less involved with their children’s schools than desirable, and that parents were not receiving the desired level or types of information from school report cards.

Section 9 of the report addresses NCLBA provisions requiring LEAs receiving funding under the ESEA to provide military recruiters with the same access to secondary school students that they provide to postsecondary institutions or prospective employers. Implementation issues that have arisen concern some confusion and controversy over the implementation of the requirements, in part due to provisions permitting secondary school students or their parents to choose to notify the LEA that they are opting out of the disclosure of this information. Among other concerns, ED has stated that some LEAs have misapplied the parental “opt out” requirements by requiring written parental consent before providing information to military recruiters, thereby creating an “opt in” rather than an “opt out” policy. On the other hand, some parent groups have criticized schools for failing to make the “opt out” option clearer to parents.

Section 10 of the report addresses NCLBA changes to ESEA requirements applicable to the participation of children enrolled in private schools. The most significant changes address how services to eligible children must be arranged between LEAs and the private schools in which eligible children are enrolled; the specific programs under which services must be provided; and how the effectiveness of these services must be assessed. Implementation issues that have arisen include concerns regarding the timeliness of LEA consultations with private school officials, and concerns regarding the availability of funding to serve eligible private school students.

Section 11 of the report discusses the unsafe school choice option established by the NCLBA. This new provision requires states to establish statewide policies that provide an opportunity to transfer to another school within the same LEA to students attending persistently dangerous public schools, and to students who are victims of a violent crime that occurred on their school grounds. In implementing this provision, concerns have been raised because — although most states have established criteria for identifying unsafe schools and have established student transfer policies — few schools have actually been identified as unsafe.

NCLBA programs are generally authorized through FY2007, with an automatic one-year extension provided under the General Education Provisions Act. Thus, it is highly likely that the NCLBA will be considered for reauthorization by the 110th Congress.

Section 1. Standards and Assessments¹

The provisions of the Elementary and Secondary Education Act (ESEA) Title I-A, as amended by the No Child Left Behind Act (NCLBA), regarding standards and assessments reinforce and expand upon provisions initially adopted in the Improving America's Schools Act of 1994 (IASA). These standard and assessment provisions are linked to the receipt of financial assistance under ESEA Title I-A — i.e., they apply only to states wishing to maintain eligibility for Title I-A grants.²

Requirements Initially Adopted Before the NCLBA. The IASA of 1994 required states to adopt standards and assessments in the subjects of reading/language arts and mathematics at three grade levels — at least once in grades 3-5, 6-9, and 10-12. States wishing to remain eligible for Title I-A grants are required to develop or adopt curriculum content standards, as well as academic achievement standards and assessments tied to the standards. States were given several years to meet the IASA requirements; the full system of standards and assessments was not required to be in place until the 2000-2001 school year. These requirements continue under the NCLBA.

Standard and Assessment Requirements Newly Adopted Under the NCLBA. In addition to the IASA's requirement for states to implement standards and assessments in reading/language arts and mathematics at three grade levels, the NCLBA requires states participating in ESEA Title I-A to

- develop and adopt standards and assessments in the subjects of mathematics and reading/language arts in *each* of grades 3-8 by the end of the 2005-2006 school year, assuming certain minimum levels of annual federal funding are provided for state assessment grants;
- adopt standards in science by the end of the 2005-2006 school year; and
- adopt assessments in science (at three grade levels) by the end of the 2007-2008 school year.

Further, to the extent practicable, limited English proficient (LEP) pupils are to be assessed in the language and form most likely to yield accurate and reliable information on what they know and can do in academic content areas (in subjects other than English itself). However, pupils who have attended schools in the United States (excluding Puerto Rico) for three or more consecutive school years are to be assessed in English.³ In addition, “reasonable” adaptations and accommodations are

¹ This section of the report was written by Wayne C. Riddle. For additional information on this topic, see CRS Report RL31407, *Educational Testing: Implementation of ESEA Title I-A Requirements Under the No Child Left Behind Act*, by Wayne C. Riddle.

² This currently includes all states (including the District of Columbia and Puerto Rico, which are generally treated as “states” under ESEA programs).

³ LEAs may continue to administer assessments to pupils in non-English languages for up to five years if, on a case-by-case basis, they determine that this would likely yield more (continued...)

to be provided for students with disabilities, consistent with the provisions of the Individuals with Disabilities Education Act (IDEA).⁴

Achievement standards must establish *at least* three performance levels for all pupils — advanced, proficient, and partially proficient (or basic). If no agency or entity in a state has authority to establish statewide standards or assessments (as is generally assumed to be the case for Iowa and Nebraska), then the state may adopt either (a) statewide standards and assessments applicable only to Title I-A pupils and programs, or (b) a policy providing that each LEA receiving Title I-A grants will adopt standards and assessments that meet the requirements of Title I-A and are applicable to all pupils served by each such LEA.

State educational agencies (SEAs) must provide evidence from a test publisher or other relevant source that their assessments are of adequate technical quality for the purposes required under Title I-A. Several statutory constraints have been placed on the authority of the Secretary of Education to enforce these standard and assessment requirements. First, the ESEA states that nothing in Title I shall be construed to authorize any federal official or agency to “mandate, direct, or control a State, local educational agency, or school’s specific instructional content, academic achievement standards and assessments, curriculum, or program of instruction” (Sections 1905, 9526, and 9527). Second, states may not be required to submit their standards to the U.S. Secretary of Education (Section 1111(b)(1)(A)) or to have their content or achievement standards approved or certified by the federal government (Section 9527(c)) in order to receive funds under the ESEA, other than the (limited) review necessary in order to determine whether the state meets the Title I-A technical requirements. Finally, no state plan may be disapproved by ED on the basis of specific content or achievement standards, or assessment items or instruments (Section 1111(e)(1)(F)). Assessment results must be provided to LEAs, schools, and teachers before the beginning of the subsequent school year so that they might be available in a timely manner to make adequate yearly progress determinations for schools and LEAs (discussed later in this report).

In addition, as discussed later in this report, states are to provide that their LEAs will annually assess the English language proficiency of their LEP pupils — including pupils’ oral, reading, and writing skills — beginning in the 2002-2003 school year. Finally, as is also discussed later in this report, the NCLBA requires states receiving grants under ESEA Title I-A to participate in biennial state-level administrations of the National Assessment of Educational Progress in 4th and 8th grade reading and mathematics, beginning in the 2002-2003 school year. The timing of several of the key requirements listed above is summarized in the following table.

³ (...continued)

accurate information on what the students know and can do.

⁴ For further information on this and related topics, see CRS Report RL32913, *The Individuals with Disabilities Education Act (IDEA): Interactions with Selected Provisions of the No Child Left Behind Act (NCLBA)*, by Richard N. Apling and Nancy Lee Jones.

Schedule for Implementation of NCLBA Standard and Assessment Requirements

School Year 2000-2001

- States were to have adopted content and performance standards, plus assessments linked to these, at three grade levels in mathematics and reading. These requirements were included in the 1994 reauthorization of the ESEA.

School Year 2002-2003

- States were required to begin to annually assess the English language proficiency of LEP pupils.
- States were first required to participate in biennial administration of the NAEP.

School Year 2005-2006

- Standards-based assessments in reading and mathematics must be administered to pupils in each of grades 3-8 by the end of this year.
- States must adopt content and achievement standards at three grade levels in science by the end of this year.

School Year 2007-2008

- States must begin to administer assessments at three grade levels in science by the end of this year.

The ESEA authorizes (in Title VI-A-1) annual *grants to the states* to help pay the costs of meeting the Title I-A standard and assessment requirements added by the NCLBA (i.e., the newly required assessments in science at three grade levels and at grades 3-8 in mathematics and reading). These grants may be used by states for development of standards and assessments or, if those have been developed, for assessment administration and such related activities as developing or improving assessments of the English language proficiency of LEP pupils. The state assessment requirements that were newly adopted under the NCLBA are contingent upon the appropriation of minimum annual amounts for these state assessment grants; their implementation may be delayed by one year for each year that the following minimum amounts are *not* appropriated: FY2002 — \$370 million; FY2003 — \$380 million; FY2004 — \$390 million; and each of FY2005-FY2007 — \$400 million. For each of FY2002-FY2006, at least the minimum amounts have been appropriated for these grants.⁵

⁵ The ESEA also authorizes competitive grants to states for the development of enhanced assessment instruments. Funds appropriated each year for state assessment grants that are in excess of the “trigger” amounts for assessment development grants listed above are to be used for enhanced assessment grants.

Implementation Status. While the focus of this report is on the implementation of major new requirements of the NCLBA, much of the implementation activity regarding standards and assessments during the initial years following enactment of the NCLBA was focused on the extended process of implementing the requirements adopted under the previous version of the ESEA, the IASA. These requirements for standards and assessments in reading/language arts and mathematics at three grade levels were supposed to have been met by the end of the 2000-01 school year, but few states met that initial deadline. As of the publication date of this report, 46 states had fully met these “1994 requirements” (see the box below). The other six states have negotiated timeline waivers (three states) or compliance agreements (three states) with ED.⁶

In their reviews of state systems of standards and assessments, peer reviewers and ED staff have been considering only various forms of “evidence” submitted by the states that are intended to document that state standards and assessments meet the specific Title I-A requirements — i.e., they are not reviewing the standards and assessments themselves. The peer reviews identified a number of common problem areas, including (a) a lack of adequate accommodation or incorporation of alternate assessments for LEP and disabled pupils, (b) insufficient documentation of the technical quality of assessments, and (c) inadequate timelines for implementation of the assessments.

Status of Review of State Assessment Systems with Respect to the “1994 Requirements” Under ESEA Title I-A

Assessments Fully Approved (46): Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, Wyoming

Timeline Waiver Granted (3): California, New Jersey, New Mexico

Compliance Agreement Negotiated (3): District of Columbia, Idaho, West Virginia

The Department’s final regulations on the NCLBA standard and assessment requirements were published in the Federal Register on July 5, 2002.⁷ ED published supplementary “non-regulatory draft guidance” on all of the standard and assessment requirements, as well as those related to NAEP participation, on March 10, 2003.⁸

⁶ See [<http://www.ed.gov/admins/lead/account/finalassess/index.html>] for details.

⁷ Department of Education, “Elementary and Secondary Education: Disadvantaged children; academic achievement improvement,” 67 *Federal Register* 45038-45047, July 5, 2002.

⁸ Available at [<http://www.ed.gov/policy/elsec/guid/saaguidance03.doc>], visited Apr. 14, (continued...)

This document was intended to provide more detailed guidance consistent with the regulations discussed above. More recently, ED officials have published regulations and other policy guidance on participation rates, plus the treatment of LEP pupils and certain pupils with disabilities in assessments.⁹

During the summer of 2005, peer reviewers and ED staff began reviewing state assessments to determine if they meet the NCLBA requirements to test pupils in each of grades 3-8 in reading and mathematics, and to adopt content and achievement standards in science, as of the end of the 2005-2006 school year. A January 19, 2005 letter to chief state school officers¹⁰ provided an outline of the assessment review process. According to ED's letter, no timeline waivers of the assessment and standard requirements will be granted. As of early June 2006, ED had completed and published reviews of the assessment systems of 33 states. The assessment systems of four states (Delaware, South Carolina, Tennessee, and Utah) have been fully approved. The remaining 29 states have been informed of additional information that must be provided, and/or additional steps they must take, in order to have their assessment systems approved.¹¹ ED staff and peer reviewers are continuing to review the state assessment programs. Thus far, alternate assessments (for pupils with disabilities) have been a major focus of attention.

As amended by the NCLBA, the ESEA provides that the Secretary shall withhold 25% of funds otherwise available for state administration and program improvement activities from states that fail to meet the 1994 standard and assessment requirements, and may withhold additional state administration funds for failure to meet new assessment requirements adopted under the NCLBA. In addition, states that persistently and thoroughly fail to meet the standard and assessment requirements over an extended period of time potentially may be subject to elimination of their Title I-A grants altogether, since they would be out of compliance with a basic program requirement.¹²

Finally, in its FY2006 and FY2007 budgets, the Bush Administration proposed a new High School Initiative (HSI). Only limited details of the proposal have been made available, and bills based on the proposal have not been introduced or acted upon. According to the available information, under the HSI, states receiving Title

⁸ (...continued)
2006.

⁹ For details, see CRS Report RL31407, *Educational Testing: Implementation of ESEA Title I-A Requirements Under the No Child Left Behind Act*, by Wayne C. Riddle.

¹⁰ Letter from Raymond Simon, Deputy Secretary of Education, to chief state school officers, January 19, 2005, at [<http://www.ed.gov/admins/lead/account/saapr2.doc>], visited Apr. 14, 2006.

¹¹ ED's decision letters on this round of assessment review may be found at [<http://www.ed.gov/admins/lead/account/nclbfinalassess/index.html>].

¹² Thus far, the sanction of withholding 25% of state administration funds for failure to meet the 1994 assessment requirements has been applied at least twice, to Georgia in 2003 and the District of Columbia in 2005, for failure to administer assessments linked to state content standards.

I-A grants would be required to administer state-developed, standards-based assessments in reading and mathematics in two additional high school grades, beyond the one grade (between grades 10 and 12) already required. An additional series of grants to states would be available to help pay the costs of developing the assessments.

Implementation Issues. Issues raised in the implementation of the ESEA Title I-A standards and assessment requirements thus far include the following:

- *What is the **financial** cost of developing and implementing the required assessments, and to what extent will federal grants be available to pay for them?* The addition of requirements to conduct annual assessments in at least four more grades than required previously, and to include standards and assessments at three grade levels in science, have required most states to significantly increase their expenditures for standard and test development and administration. It is very difficult, if not impossible, to specify all of these potential costs with precision. The NCLBA conference report directs the Government Accountability Office (GAO) to conduct a study of the costs to each state of developing and administering the assessments required under Title I-A; however, no information is yet available from the study. Studies by private organizations of the costs of meeting the NCLBA assessment requirements, and of whether those costs exceed the aggregate level of assessment development funds provided under the NCLBA, have reached contradictory results.
- *What are the likely **educational** benefits and costs of the expanded Title I-A assessment requirements?* The primary benefit from annual administration of a consistent series of standards-based tests would be the provision of timely information on the performance of pupils, schools, and LEAs throughout most of the elementary and middle school grades. The availability of such consistent annual assessment results would be of value for both diagnostic and accountability purposes. Arguably, additional assessment information will improve the quality of the adequate yearly progress (AYP) determinations that are based primarily on the assessments, and help determine whether Title I-A is meeting its primary goals, such as reducing achievement gaps between disadvantaged and other pupils. At the same time, the expanded Title I-A assessment requirements might lead to a variety of educational “costs,” or unintended consequences. One such cost would be expanded federal influence on state and local education policies — e.g., assessment requirements attached to an aid program focused on *disadvantaged pupils* may broadly influence policies regarding standards, assessments, and accountability affecting *all pupils* in participating states. In the majority of states that did not previously administer standards-based assessments in each of grades 3-8, their policy may have resulted primarily from cost or time constraints, or the states may have determined that annual testing of this sort is not educationally

appropriate, or at least that its benefits are not equal to the relevant costs. These costs may include an increased risk of “overemphasis” on preparation for the tests, especially if the tests do not adequately assess the full range of knowledge and skills that schools are expected to impart.

Section 2. National Assessment of Educational Progress¹³

The National Assessment of Educational Progress (NAEP) is a federally funded series of assessments of the academic performance of elementary and secondary students in the United States. NAEP tests generally are administered to a sample of public and private school pupils in grades 4, 8, and 12 in a variety of subjects, including reading, mathematics, science, writing, and less frequently, geography, history, civics, social studies, and the arts. NAEP assessments have been conducted since 1969.

NAEP is administered by the National Center for Education Statistics (NCES), with oversight and several aspects of policy established by the National Assessment Governing Board (NAGB). Both entities are part of the U.S. Department of Education. Since 1983, the assessment has been developed primarily under a cooperative agreement with the Educational Testing Service (ETS), a private, non-profit organization that also develops and administers such assessments as the SAT.

NAEP consists of two separate groups of tests. One is the *main assessment*, in which test items (questions) are revised over time in both content and structure to reflect more current instructional standards and practices. The main assessment also reports pupil scores in relation to *performance levels* — standards for pupil achievement that are based on score thresholds set by NAGB. The performance levels are considered to be “developmental,” and are intended to place NAEP scores into context. They are based on determinations by NAGB of what pupils should know and be able to do at basic (“partial mastery”), proficient (“solid academic performance”), and advanced (“superior performance”) levels with respect to challenging subject matter. The second group of NAEP tests form the long-term trend assessment, which monitors trends over time in math and reading achievement.¹⁴

All NAEP tests are administered to only a representative sample of pupils enrolled in public and private K-12 schools, and the tests are designed so that no pupil takes an entire NAEP test. The use of sampling is intended to minimize both the costs of NAEP and test burdens on pupils. It also makes it possible to include a broad range of items in each test. Since no individual pupil takes an entire NAEP test, it is impossible for NAEP to report individual pupil scores.

The frameworks for NAEP tests provide a broad outline of the content on which pupils are to be tested. Frameworks are developed by NAGB through a national consensus approach involving teachers, curriculum specialists, policymakers, business representatives, and the general public. In developing the test frameworks,

¹³ This section was written by Wayne C. Riddle. For additional information on this topic, see CRS Report RL31407, *Educational Testing: Implementation of ESEA Title I-A Requirements Under the No Child Left Behind Act*, by Wayne C. Riddle.

¹⁴ Since the long-term trend assessment is not involved with the ESEA Title I-A assessment requirements, it will not be discussed further.

various state and national standards are taken into consideration, but the frameworks are not intended to specifically reflect any particular set of standards. In addition, pupils and school staff fill out background questionnaires.

While NAEP, as currently structured, cannot provide assessment results for individual pupils, the levels at which scores could be provided — the nation overall, states, LEAs, or schools — depend on the size and specificity of the sample group of pupils tested. NAEP has always provided scores for the nation as a whole and four multistate regions. Beginning in 1990, NAEP has conducted a limited number of state-level assessments in 4th and 8th grade mathematics, reading, and occasionally science. Under state NAEP, the sample of pupils tested in a state is increased in order to provide reliable estimates of achievement scores for pupils in each participating state. Beginning in 2002, NAEP scores have also been compiled for a small number of large, central city LEAs, as part of a Trial Urban District Assessment program.

Until enactment of the NCLBA, participation in NAEP was voluntary for states; the additional cost associated with state NAEP administration was borne by the states; and, after participating in any state NAEP test, states could separately decide whether to allow the release of NAEP results for their state. As with other main NAEP tests, state NAEP scores are reported with respect to performance levels — basic, proficient, and advanced — developed by NAGB. In general, approximately 40 states participated in state-level NAEP assessments between 1990 and 2000, and all “states” except two (South Dakota and Puerto Rico) participated in state NAEP at least once during this period.

The NCLBA provides that all states wishing to remain eligible for grants under ESEA Title I-A are required to participate in state NAEP tests in 4th and 8th grade reading and mathematics, which are administered every two years. The costs of testing expanded pupil samples in the states are paid by the federal government. An unstated but implicit purpose of this new requirement is to “confirm” trends in pupil achievement, as measured by state-selected assessments.¹⁵ In addition, agents of the federal government are prohibited from using NAEP assessments to influence state or LEA instructional programs or assessments.

Consistent with these NCLBA provisions, appropriations for NAEP and NAGB activities increased substantially from \$40 million for FY2001 to \$111.6 million for FY2002, \$94.8 million for each of FY2003 and FY2004, declining slightly to \$94.1 million for FY2005 and \$93.1 million for FY2006. The Administration has requested an increase to \$97.1 million for FY2007.

Implementation Status. In the period since enactment of the NCLBA, a number of steps have been taken toward implementation of the new requirements for state participation in NAEP. First, the schedule for test administration has been

¹⁵ See the National Assessment Governing Board, *Using the National Assessment of Educational Progress to Confirm State Test Results*, report prepared by the Ad Hoc Committee on Confirming Test Results, Mar. 1, 2002, available at [http://www.nagb.org/pubs/color_document.pdf], visited Apr. 14, 2006.

revised to provide for administration of state NAEP tests in 4th and 8th grade reading and mathematics every two years, beginning with the 2002-2003 school year (spring 2003). Initial NAEP 4th and 8th grade reading and mathematics results for all states (but not Puerto Rico — see below) were released in November 2003. A second round of NAEP tests was administered in all states between January and March 2005, and results were published in October 2005.

In addition, several changes to NAEP policies and practices are being implemented to complement the expanded role of NAEP under the NCLBA.¹⁶ For example, in recognition of the increased emphasis on measurement of performance gaps among different demographic groups of pupils in the NCLBA, more questions are being added at the upper and lower ends of the difficulty range, so that achievement gaps among pupil groups can be more reliably measured.

Special issues arise with respect to Puerto Rico, which is treated as a state under ESEA Title I-A but did not participate in state NAEP tests prior to the enactment of the NCLBA. Questions have been raised about the comparability of tests administered in different languages, especially in subjects such as reading. Some NAEP tests were administered to 4th and 8th grade pupils in Puerto Rico on a pilot basis beginning in 2003, but no test results have yet been published.

In conjunction with its FY2006 and FY2007 budget requests, as part of a High School Initiative, the Administration proposed the appropriation of additional funding for NAEP, to pay the costs of developing and administering a new series of 12th grade reading and mathematics assessments at the state level. Under the proposal, states receiving Title I-A grants would be required to participate in these 12th grade tests that would complement the current 4th and 8th grade NAEP tests.

Implementation Issues. While the NAEP participation requirements of the NCLBA are being implemented fully and on schedule, a number of issues have been raised regarding these requirements:

- *Might the influence of NAEP on state standards and assessments be increased as a result of the increased attention to, and required participation in, NAEP tests?* State involvement with NAEP has changed significantly under the NCLBA, although the stakes for states remain relatively low. State results are being published as an implicit “confirmation” of test score trends on state assessments, but these NAEP scores still have no direct impact on state eligibility for federal assistance. Nevertheless, even a small increase in the stakes associated with state performance on NAEP tests attracts attention to the possibility that NAEP frameworks and test items might influence state standards and assessments. To the extent that the required participation in NAEP increases attention to state performance on these tests, there might be a basis for concern that

¹⁶ See *NAGB Adopts Policies to Implement the No Child Left Behind Act of 2001* at [<http://www.nagb.org/>], plus [<http://nces.ed.gov/nationsreportcard/about/current.asp>], both sites visited Apr. 14, 2006.

states would have an incentive to modify their curriculum content standards to more closely resemble the NAEP test frameworks. To counteract this potential issue, the NCLBA prohibits the use of NAEP assessments by agents of the federal government to influence state or LEA instructional programs or assessments. Nevertheless, subtle, indirect, and/or unintended forms of influence may be virtually impossible to detect or prohibit.

- *Might a conflict arise between the requirement for NAEP participation by states participating in ESEA Title I-A and the provision that participation in NAEP tests is voluntary for pupils?* Some have expressed concern that, in a time of likely increased assessment activity for pupils nationwide, resistance to participation in NAEP might grow to an extent that it threatens the quality of the national and state samples of tested pupils, leaving states stuck between a requirement to participate in NAEP and an inability to recruit a sufficiently large sample of pupils to participate in order to produce valid and reliable assessment results. The primary counter to this concern is that the policies regarding voluntary participation in NAEP have, in practice, changed only modestly. While states or LEAs previously could have mandated participation by pupils in the past, apparently they generally attempted to avoid doing so.
- *Can NAEP results be used to “confirm” state test score trends? And, for the participating LEAs, can results under the Trial Urban Assessment be used to “confirm” score trends on state tests?* An unstated, but clearly implicit, purpose of the state NAEP participation requirement is to “confirm” trends in pupil achievement, as measured by state-selected assessments by comparing them with trends in NAEP results. While still “developmental,” NAEP performance standards are implicitly a form of “nationally consistent” standards, in contrast to widely varying state standards. Some have questioned whether it is possible or appropriate to use results on one assessment to “confirm” results on another assessment that may have been developed very differently. State assessments vary widely in terms of several important characteristics, such as the content and skills that they are designed to assess, their format, the time of year that tests are administered, the stakes associated with test performance, and modes of response. As a result, some state assessments will be much more similar to NAEP in these important respects than others, and there will be consequent variation in the significance of similarities or differences when comparing trends in NAEP versus state assessment score trends for pupils.

Section 3. Adequate Yearly Progress¹⁷

Since the 1988 reauthorization of the ESEA (P.L. 100-297), the accountability provisions of Title I-A have been increasingly focused on achievement and other outcomes for participating pupils and schools. Since the subsequent ESEA reauthorization in 1994 (the Improving America's Schools Act of 1994, P.L. 103-382), and particularly under the No Child Left Behind Act of 2001 (NCLBA, P.L. 107-110), a key concept embodied in these outcome accountability requirements is that of "adequate yearly progress (AYP)" for schools, LEAs, and (with much less emphasis) states overall. The primary purpose of AYP requirements is to serve as the basis for identifying schools and LEAs where performance is inadequate, so that these inadequacies may be addressed, first through provision of increased support and, ultimately, through a variety of "corrective actions."¹⁸ These actions are to be taken with respect to schools or LEAs that fail to meet AYP for *two or more consecutive years*; no action need be taken with respect to a school or LEA failing to meet AYP standards for only one year. (See discussion below on "Outcome Accountability under ESEA Title I-A.")

Through the NCLBA, the Title I-A requirements for state-developed standards of AYP were substantially expanded in scope and specificity. The NCLBA provisions regarding AYP may be seen as an evolution of and as a reaction to perceived weaknesses in the AYP requirements of the 1994 IASA. The latter were frequently criticized as being insufficiently specific, detailed, or challenging, especially in their failure to focus on specific disadvantaged pupil groups or to require continuous improvement toward any ultimate goal.

Under the NCLBA, AYP is defined primarily on the basis of multiple aggregations of pupil scores on state assessments of academic achievement. State AYP standards must also include at least one additional academic indicator. In the case of high schools, this additional indicator must be the graduation rate; for elementary and middle schools, the attendance rate is often used as the additional indicator. The additional indicators may not be employed in a way that would reduce the number of schools or LEAs identified as failing to meet AYP standards. In addition, AYP calculations must be *disaggregated* — i.e., they must be determined separately and specifically for not only all pupils but also for several demographic groups of pupils within each school, LEA, and state. The specified demographic groups are

- economically disadvantaged pupils,
- LEP pupils,
- pupils with disabilities, and

¹⁷ This section was written by Wayne C. Riddle. For additional information on this topic, see CRS Report RL32495, *Adequate Yearly Progress (AYP): Implementation of the No Child Left Behind Act*; and CRS Report RL33032, *Adequate Yearly Progress (AYP): Growth Models Under the No Child Left Behind Act*, both by Wayne C. Riddle.

¹⁸ For information on these corrective actions, see CRS Report RL31487, *Education for the Disadvantaged: Overview of ESEA Title I-A Amendments Under the No Child Left Behind Act*, by Wayne C. Riddle.

- pupils in major racial and ethnic groups, as well as all pupils.

However, there are three major constraints on the consideration of these pupil groups in AYP calculations. First, pupil groups need not be considered in cases where their number is so relatively small that achievement results would not be statistically significant or the identity of individual pupils might be divulged. The selection of the minimum number (n) of pupils in a group for the group to be considered in AYP determinations has been left largely to state discretion, and state policies regarding “n” have varied widely. Second, it has been left to the states to define the “major racial and ethnic groups” on the basis of which AYP must be calculated. And third, pupils who have not attended the same school for a full year need not be considered in determining AYP at the school level, although they are still to be included in LEA and state AYP determinations (if they attended schools in the same LEA or state for the full academic year).

AYP standards under the NCLBA must be applied to *all* public schools, LEAs, and for the first time to states overall, if a state chooses to receive Title I-A grants. However, corrective actions for failing to meet AYP standards need only be applied to schools and LEAs participating in Title I-A, and there are no sanctions for states overall beyond the provision of technical assistance.

State AYP standards must incorporate concrete movement toward meeting an *ultimate goal* of all pupils reaching a proficient or advanced level of achievement within 12 years (by the end of the 2013-2014 school year). The steps — i.e., required levels of achievement — toward meeting this goal must increase in “equal increments” over time. The first increase in the thresholds must occur after no more than two years, and remaining increases at least once every three years. As a result of the initial increase requirement, many states raised their thresholds for the first time in 2005 when determining AYP based on assessment scores from the 2004-2005 school year. Several states have accommodated this requirement in ways that require much more rapid progress in the later years of the period leading up to 2013-2014 than in the earlier period.

The primary basic structure for AYP under the NCLBA is now specified in the authorizing statute as a “group status model.”¹⁹ A “uniform bar” approach is employed: states are to set a threshold percentage of pupils at proficient or advanced levels each year that is applicable to all pupil subgroups of sufficient size to be considered in AYP determinations. The threshold levels of achievement are to be set separately for reading and math, and may be set separately for each level of K-12 education (elementary, middle, and high schools). The minimum *starting point* for the “uniform bar” in the initial period is to be the *greater* of the percentage of pupils at the proficient or advanced level of achievement for: (a) the lowest-achieving pupil group in the base year (2001-2002), *or* (b) the school at the 20th percentile (from the bottom) in the state.

¹⁹ For a discussion of the models of AYP, see CRS Report RL33032, *Adequate Yearly Progress (AYP): Growth Models Under the No Child Left Behind Act*, by Wayne C. Riddle.

In determining whether scores for a group of pupils are at the required level, the averaging of scores over two to three years is allowed. In addition, the NCLBA statute includes a *safe harbor* provision, under which a school that does not meet the standard AYP requirements may still be deemed to meet AYP if it experiences a 10% reduction in the gap between 100% and the percentage in the preceding year for the specific pupil groups that fail to meet the “uniform bar,” and those pupil groups also make progress on at least one other academic indicator included in the state’s AYP standards. This alternative provision adds “successive group improvement” as a secondary AYP model under the NCLBA.

A third basic type of AYP model, not explicitly mentioned in the NCLBA statute, is the *individual/cohort growth* model. The key characteristic of this model is a focus on the rate of change over time in the level of achievement among cohorts of the same pupils. Growth models are longitudinal, based upon the tracking of the same pupils as they progress through their K-12 education careers. While the progress of pupils is tracked individually, results are typically aggregated when used for accountability purposes. In general, growth models would give credit for meeting steps along the way to proficiency in ways that a status model typically does not.

In November 2005, the Secretary of Education announced a growth model pilot program under which up to 10 states would be allowed to use growth models to make AYP determinations for the 2005-2006 school year.²⁰ Interested states were required to apply to ED for permission to participate in the pilot, and the models proposed by the states must meet at least the following criteria (in addition to a variety of criteria applicable to all state AYP policies — e.g., measure achievement separately in reading/language arts and mathematics):

- they must incorporate an ultimate goal of all pupils reaching a proficient or higher level of achievement by the end of the 2013-2014 school year;
- achievement gaps among pupil groups must decline in order for schools or LEAs to meet AYP standards;
- annual achievement goals for pupils must not be set on the basis of pupil background or school characteristics;
- annual achievement goals must be based on performance standards, not past or “typical” performance growth rates;
- the assessment system must produce comparable results from grade to grade and year to year;
- the progress of individual students must be tracked within a state data system.

In addition, applicant states must have their annual assessments for each of grades 3-8 approved by ED, and these assessments must have been in place for at least one year previous to 2005-2006. According to ED, 20 states have submitted applications

²⁰ U.S. Department of Education, “Secretary Spellings Announces Growth Model Pilot, Addresses Chief State School Officers’ Annual Policy Forum in Richmond,” press release, Nov. 18, 2005, at [<http://www.ed.gov/news/pressreleases/2005/11/11182005.html>], visited Apr. 14, 2006.

to be allowed to use growth models to make AYP determinations beginning with either the 2005-2006 or 2006-2007 school years. As of early June 2006, the proposals of two states (North Carolina and Tennessee) to participate in this pilot program, beginning with AYP determinations based on 2005-2006 assessment results, have been approved.

Finally, the NCLBA AYP provisions include an assessment *participation rate* requirement. In order for a school to meet AYP standards, at least 95% of all pupils, as well as at least 95% of each of the demographic groups of pupils considered for AYP determinations for the school or LEA, must participate in the assessments that serve as the primary basis for AYP determinations.²¹

Implementation Status. States began determining AYP for schools, LEAs, and the states overall based on the NCLBA provisions beginning with the 2002-2003 school year. The deadline for states to submit to ED their AYP standards based on the NCLBA provisions was January 31, 2003, and according to ED, all states met this deadline. On June 10, 2003, ED announced that accountability plans had been approved for all states. However, many of the approved plans required states to take additional actions following submission of their plan.²²

In the period preceding ED's review of state accountability plans under the NCLBA, the Department published regulations in the *Federal Register* on December 2, 2002, that essentially mirrored the relevant provisions in the authorizing statute. Aspects of state AYP plans that apparently received special attention in ED's reviews of them included (1) the pace at which proficiency levels are expected to improve; (2) whether schools or LEAs must fail to meet AYP with respect to the *same* pupil group(s), grade level(s) and/or subject areas to be identified as needing improvement, or whether two consecutive years of failure to meet AYP with respect to *any* of these categories should lead to identification; (3) the length of time over which pupils should be identified as being LEP; (4) the minimum size of pupil groups in order to be considered in AYP determinations; (5) whether to allow schools credit for raising pupil scores from below basic to basic in making AYP determinations; and (6) whether to allow use of statistical techniques such as "confidence intervals" (i.e., whether scores are below the required level to a statistically significant extent) in AYP determinations.

On several occasions, beginning in late 2003, ED officials have published additional regulations and other policy guidance on selected aspects of AYP determination and related assessment issues, in an effort to provide additional flexibility. This guidance has addressed several aspects of AYP implementation that have created particular difficulties for many schools and LEAs: assessment participation rates, calculation of AYP with respect to LEP pupils and pupils with

²¹ These participation rates may be averaged over a two- or three-year period.

²² The plans have been posted by ED at [<http://www.ed.gov/admins/lead/account/stateplans03/index.html>], visited Apr. 14, 2006.

disabilities, plus options for determining AYP in targeted assistance Title I-A programs.²³

Over the period following the initial submission and approval of state accountability plans for AYP and related policies in 2003 through the present, many states have proposed a number of revisions to their plans.²⁴ The major aspects of state accountability plans for which changes have been proposed *and approved* include (a) changes to take advantage of revised federal regulations and policy guidance regarding assessment of pupils with the most significant cognitive disabilities, LEP pupils, and test participation rates; (b) limiting identification for improvement to schools that fail to meet AYP in the same subject area for two or more consecutive years, and limiting identification of LEAs for improvement to those that failed to meet AYP in the same subject area and across all three grade spans for two or more consecutive years; (c) using alternative methods to determine AYP for schools with very low enrollment; (d) initiating or expanding use of confidence intervals in AYP determinations; (e) changing (usually increasing) minimum group size; and (f) changing graduation rate targets for high schools. Accountability plan changes that have frequently been requested but *not approved* by ED include (a) identification of schools for improvement only if they failed to meet AYP with respect to the same pupil group *and* subject area for two or more consecutive years, and (b) retroactive application of new forms of flexibility to previous years.²⁵

It has been widely reported that one state has been fined by ED for failure to publish AYP results for schools in a timely manner. According to articles published in April 2005, the Texas SEA was fined \$444,282 in Title I-A state administration funds for failure to release AYP results, based on assessment scores for the 2003-2004 school year, until September 30, 2004.²⁶

Implementation Issues. A number of issues have arisen during the implementation of the NCLBA provisions regarding AYP. They include the following:

- *Have ED's reviews of state AYP policies been appropriately rigorous, transparent, flexible and consistent?* As ED staff and

²³ For details on these policy changes, see CRS Report RL32495, *Adequate Yearly Progress (AYP): Implementation of the No Child Left Behind Act*, by Wayne C. Riddle.

²⁴ For information on accountability plan revisions proposed by each state, see [<http://www.ed.gov/admins/lead/account/letters/index.html>], visited Apr. 14, 2006.

²⁵ See Center on Education Policy, "Rule Changes Could Help More Schools Meet Test Score Targets for the No Child Left Behind Act," Oct. 22, 2004, available at [<http://www.ctredpol.org>], visited Apr. 14, 2006; "Changes in Accountability Plans Dilute Standards, Critics Say," *Title I Monitor*, Nov. 2004; Council of Chief State School Officers, "Revisiting Statewide Educational Accountability Under NCLB," Sept. 2004, available at [<http://www.ccsso.org>], visited Apr. 14, 2006; and "Requests Win More Leeway Under NCLB," *Education Week*, July 13, 2005, p. 1.

²⁶ See "ED fines Texas for missing AYP reporting deadline," *Education Daily*, Apr. 26, 2005, p. 1.

designated peer reviewers have examined initial and revised state AYP policies, several observers have expressed concerns about: a lack of transparency in the review procedures and criteria; inconsistencies (especially over time) in the types of changes that ED officials have approved; whether the net effect of the changes is to make the accountability requirements more reasonable or to undesirably weaken them; whether the changes may make an already complicated accountability system even more complex; and timing — whether decisions on proposed changes are being made in a timely manner by ED.

- *Is the ultimate goal embodied in the NCLBA's AYP provisions — all pupils at a proficient or higher level of achievement within 12 years of enactment — both desirable and achievable without a substantial weakening by states of pupil achievement standards?* The required incorporation of this ultimate goal is one of the most significant differences between the AYP provisions of the NCLBA and those under the previous IASA. Without an ultimate goal of having all pupils reach the proficient level of achievement by a specific date, states might simply establish relative goals that provide no real movement toward, or incentives for, significant improvement, especially among disadvantaged pupil groups. Proponents of such a demanding ultimate goal argue that schools and LEAs frequently meet the goals established for them, even rather challenging goals, *if* the goals are very clearly identified, defined, and established, and are attainable. A demanding goal might maximize efforts toward improvement by state public school systems, *even if* the goal is not met. Nevertheless, a goal of having *all* pupils at a proficient or higher level of achievement, within any specified period of time, may be criticized as being “unrealistic,” if one assumes that “proficiency” has been established at a challenging level. It is likely that many states, schools and LEAs will not meet the NCLBA's ultimate AYP goal, unless state standards of proficient performance are significantly lowered and/or states aggressively pursue the use of such statistical techniques as setting high minimum group sizes and confidence intervals to substantially reduce the range of pupil groups actually considered in AYP determinations and effectively lower required achievement level thresholds.
- *Are such statistical techniques as confidence intervals and data-averaging being appropriately applied in state AYP policies?* Many states have used one or both of these statistical techniques to attempt to improve the validity and reliability of AYP determinations, with an effect in most cases of reducing the number of schools or LEAs identified as failing to meet AYP standards. The averaging of test score results for various pupil groups over two- or three-year periods is explicitly authorized under the NCLBA; the use of confidence intervals was not explicitly envisioned in the drafting of the NCLBA's AYP provisions, but has been approved by ED and widely adopted by states. The use of confidence intervals to

determine whether group test scores fall below required thresholds to a *statistically significant degree* addresses the fact that test scores for any group of pupils will vary from one test administration to another, and these variations may be especially large for a relatively small group of pupils. At the same time, the use of confidence intervals reduces the likelihood that schools or LEAs will be identified as failing to make AYP. For small pupil groups and high levels of desired accuracy, the size of confidence intervals may be rather large. Ultimately, the use of this technique may mean that the average achievement levels of pupil groups in many schools will be below 100% proficiency by 2013-2014, yet the schools would still meet AYP standards because the groups' scores are within relevant confidence intervals.

- *Are some states setting minimum group size levels so high that a large proportion of some disadvantaged pupil groups is not being considered in school-level AYP determinations?* Another important technical factor in state AYP standards is the establishment of the minimum size (n) for pupil groups to be considered in AYP calculations. The NCLBA recognizes that in the disaggregation of pupil data for schools and LEAs, there might be pupil groups that are so small that average test scores would not be statistically reliable, or the dissemination of average scores for the group might risk violation of pupils' privacy rights. The selection of this minimum number has been left to state discretion, and the range of selected values for "n" is rather large. The higher the minimum group size, the less likely that many pupil groups will be separately considered in AYP determinations. This gives schools and LEAs fewer thresholds to meet, and reduces the likelihood that they will be found to have failed to meet AYP standards. At the same time, relatively high levels for "n" weaken the NCLBA's specific focus on a variety of pupil groups, many of them disadvantaged.
- *Does the requirement for disaggregation of pupil groups in AYP determinations make it too difficult for schools or LEAs with diverse pupil populations to meet AYP standards?* All other relevant factors (especially minimum group size) being equal, the more diverse its pupil population, the more thresholds a school or LEA must meet in order to make AYP. While this was an intended result of legislation designed to focus on specific disadvantaged pupil groups, the impact of making it more difficult for schools and LEAs serving diverse populations to meet AYP standards may also be seen as an unintended consequence of the NCLBA. A number of studies have concluded that, when comparing public schools with comparable aggregate pupil achievement levels or aggregate percentages of pupils from low-income families, schools with larger numbers of different NCLBA-relevant demographic groups are substantially less likely to meet AYP standards. However, without specific requirements for achievement gains by each of the major pupil groups, it is possible that insufficient attention would be paid to the

performance of the disadvantaged pupil groups among whom improvements are most needed, and for whose benefit the Title I-A program was established, since it is possible for many schools and LEAs to demonstrate improvements in achievement by their pupils overall while the achievement of their disadvantaged pupils does not improve significantly.

- *Are “too many” schools and LEAs failing to meet AYP standards?* As is discussed in the following section of this report, relatively large percentages of public schools and LEAs overall have failed to meet state AYP standards. Future increases in performance thresholds, as the ultimate goal of all pupils at the proficient or higher level of achievement is approached, as well as implementation of tests in additional grades in many states, may result in higher percentages of schools failing to make AYP. ED officials have emphasized the importance of taking action to identify and improve underperforming schools, no matter how numerous. They have also emphasized the possibilities for flexibility in taking corrective actions with respect to schools that fail to meet AYP, depending on the extent to which they fail to meet those standards. Further, some analysts argue that a set of AYP standards that a relatively high percentage of public schools fails to meet may accurately reflect pervasive weaknesses in public school systems, especially with respect to disadvantaged pupil groups. Others have consistently expressed concern about the accuracy, efficacy, and complexity of an accountability system under which such a relatively high percentage of schools is identified as failing to make adequate progress, with consequent strain on financial and other resources necessary to provide technical assistance, public school choice and supplemental services options, as well as other corrective actions.
- *Are the NCLBA’s AYP provisions being undermined by wide variations in state standards for pupil achievement?* The percentage of public schools and LEAs failing to meet AYP standards is not only relatively large in the aggregate, but varies widely among the states. It is likely that state variations in the percentage of schools failing to meet AYP standards are based not only on underlying differences in achievement levels, as well as a variety of technical factors in state AYP provisions, but also on differences in the degree of rigor or challenge in state pupil performance standards and assessments. While the basic structure of AYP definitions is now substantially more consistent across states than before enactment of the NCLBA, significant variations remain with respect to technical factors such as minimum group size and confidence intervals, and substantial differences in the degree of challenge embodied in state standards and assessments remain. Such variation reflects, and may be the inevitable result of, federalism in education policy-making. Nevertheless, as the NCLBA is considered for reauthorization by the 110th Congress, there may be interest in attempting to make pupil performance expectations more consistent across the Nation.

- *Is the 95% assessment participation requirement too high?* In several cases, schools or LEAs fail to meet AYP solely because participation rates in assessments fall marginally below the required level of 95% of all pupils, as well as 95% of pupils in each of the relevant demographic groups meeting the minimum size threshold. While few argue against having any participation rate requirement, it may be questioned whether it needs to be as high as 95%. The average percentage of enrolled pupils in attendance at public K-12 schools in recent years (93.5%) is below this level, and such attendance rates are generally assumed to be substantially lower than this national average in schools with high proportions of disadvantaged pupils. Even though schools are explicitly allowed to administer assessments on make-up days following the primary date of test administration, and it is probable that more schools and LEAs will meet this requirement as they become more fully aware of its significance, it is likely to continue to be very difficult for some schools and LEAs to meet a 95% test participation requirement. According to the recent ED report, “National Assessment of Title I: Interim Report,” 6% of the schools that failed to meet AYP requirements for the 2003-2004 school year did so on the basis of participation rates in addition to other factors.

Section 4. Outcome Accountability Under ESEA Title I-A²⁷

The No Child Left Behind Act (NCLBA) strengthened the accountability provisions of ESEA Title I-A over what was required under Improving America's Schools Act (IASA) by requiring states to demonstrate in their state plans that they have a single, statewide accountability system, applicable to all elementary and secondary schools and LEAs in the state. Each state's accountability system must be based on the academic assessments and other academic indicators it uses to measure academic progress. LEAs are required to annually review the status of each public school in making adequate yearly progress (AYP) toward state standards of academic achievement; and SEAs are required to annually review the status of each LEA in making AYP. (Accountability provisions for charter schools must be implemented to be consistent with state charter school laws.) The ESEA establishes a system of rewards and sanctions designed to hold Title I-A schools and LEAs accountable for their performance. Each year, states and LEAs are required to prepare and disseminate report cards containing academic achievement and other data. States are also required to prepare annual reports for submission to the Secretary. The Secretary, in turn, is required to compile national and state-level data for presentation in annual reports to Congress. While AYP determinations must be made with respect to every public school and LEA in a state that receives Title I-A funds, states vary in the extent to which they apply the sanctions to non-Title I-A schools or LEAs.

Rewards, Support, and Recognition

Each state participating in ESEA Title I-A is required to establish an Academic Achievement Awards Program for purposes of making academic achievement awards to schools that have either significantly closed academic achievement gaps between student subgroups or exceeded their AYP requirements for two or more consecutive years. States may also give awards to LEAs that have exceeded their AYP requirements for two or more consecutive years. Under Academic Achievement Award Programs, states may recognize and provide financial awards to teachers or principals in schools that have significantly closed the academic achievement gap or that have made AYP for two consecutive years. States may fund Academic Achievement Awards for schools and LEAs by reserving up to 5% of any Title I-A funding that is in excess of the state's previous year's allocation.²⁸ States may fund teacher and principal awards by reserving such sums as necessary from the amount received under ESEA Title II-A-1 — Teacher and Principal Training and Recruiting Fund, Grants to States. The extent to which LEAs or states have actually reserved Title I-A funds for making such financial awards is unclear.

²⁷ This section was written by David P. Smole with contributions from Wayne C. Riddle.

²⁸ Guidance on procedures for reserving funds for State Academic Achievement Awards Programs is available in U.S. Department of Education, Office of Elementary and Secondary Education, *Guidance: State Educational Agency Procedures for Adjusting Basic, Concentration, Targeted, and Education Finance Incentive Grant Allocations Determined by the U.S. Department of Education*, May 23, 2003, pp. 32-34.

School and LEA Improvement, Corrective Action, and Restructuring

In instances where Title I-A schools do not make AYP for two or more consecutive years, they become subject to a range of increasingly severe sanctions, which are coupled with technical assistance provided by the LEA. LEAs become subject to sanctions — overseen by the SEA — in instances where they do not make AYP for two or more consecutive years. **Table 1** depicts the stages in which sanctions are applied to schools and LEAs under ESEA Title I-A. Requirements for schools and LEAs are described below for each accountability stage.

**Table 1. ESEA Title I-A Accountability Stages
for Schools and LEAs**

Cumulative years not making AYP	Accountability stage	
	School	LEA
1	N/A	N/A
2	School improvement	LEA improvement*
3	2 nd year of school improvement [^]	LEA improvement*
4	Corrective action [^]	Corrective action [^]
5	Plan for restructuring [^]	Corrective action [^]
6	Implement restructuring [^]	Corrective action [^]

Source: ESEA, § 1116.

Note: N/A — Not Applicable.

* SEAs *may* implement corrective action for an LEA identified for LEA improvement.

[^] Accountability requirements associated with the 2nd year of school improvement, corrective action, and restructuring may be delayed for up to one year for a school or LEA if it makes AYP for one year, or if its failure to make AYP is due to a natural disaster or a significant decline in financial resources.

Schools. After not making AYP for two consecutive years, a Title I-A school is identified for **school improvement**. Being designated for school improvement carries with it the requirement to develop or revise a school plan designed to result in the improvement of the school. LEAs are required to provide schools within their jurisdictions with technical assistance in the design and implementation of school improvement plans. Schools identified for improvement must use at least 10% of their Title I-A funding for professional development. All students attending Title I-A schools identified for school improvement also must be offered **public school choice** — the opportunity to transfer to another public school within the same LEA. Under public school choice, students must be afforded the opportunity to choose from among two or more schools, located within the same LEA, that have not been identified for school improvement, corrective action, or restructuring, and that also

have not been identified as persistently dangerous schools (described in Section 11). LEAs are required to provide students who transfer to different schools with transportation and must give priority in choosing schools to the lowest achieving children from low-income families. LEAs may not use lack of capacity as a reason for denying students the opportunity to transfer to a school of choice.²⁹ In instances where there are no eligible schools in the student's LEA, LEAs are encouraged to enter into cooperative agreements with surrounding LEAs to enable students to transfer to an eligible public school.

If, after being identified for school improvement, a school does not make AYP for another year, it must be identified for a **second year of school improvement** by the end of that school year. All students attending a school identified for a second year of school improvement must continue to be offered the option of attending another eligible public school within the same LEA. In addition, students from low-income families who continue to attend the school must be offered the opportunity to receive **supplemental educational services (SES)**.³⁰ Supplemental educational services are educational activities, such as tutoring, that are provided outside of normal school hours and which are designed to augment or enhance the educational services provided during regular periods of instruction. Supplemental educational services may be provided by a non-profit entity, a for-profit entity, or the LEA, unless such services are determined by the state education agency (SEA) to be unavailable in the local area. The SEA is required to maintain a list of approved SES providers (including those offering services through distance learning) from which parents can select. LEAs may be required to expend up to an amount equal to 20% of their Title I-A grants on transportation for public school choice and supplemental educational services combined.

If a school fails to make AYP for a total of two years after being identified for school improvement, it must be identified for **corrective action** by the end of the school year. For schools identified for corrective action, LEAs must continue to provide technical assistance, offer public school choice and supplemental educational services, and must implement one of the following corrective actions: replacing school staff relevant to the school not making AYP; implementing a new curriculum; limiting management authority at the school level; appointing an expert advisor to assist in implementing the school improvement plan; extending the school year or the school day; or restructuring the school's internal organization. If a school does not make AYP for a third year after being identified for school improvement, by the end of the school year the LEA must begin to **plan for restructuring**, while continuing to implement the requirements of corrective action. Restructuring of the school must involve implementation of some form of alternative governance structure, such as reopening the school as a charter school, replacing all or most of the school staff, contracting with an education management organization to operate the school, or turning the school over to the SEA. If an additional year passes without the school making AYP, the LEA must **implement restructuring** of the school.

²⁹ 34 CFR 200.44(d).

³⁰ For further information on supplemental educational services, see CRS Report RL31329, *Supplemental Educational Services for Children from Low-Income Families Under ESEA Title I-A*, by David P. Smole.

Any of the sanctions described above may be delayed for up to one year if the school makes AYP for a single year, or if the school's failure to make AYP is due to unforeseen circumstances, such as a natural disaster or a significant decline in financial resources of the LEA or school. Schools that make AYP for two consecutive years may not be identified for school improvement, nor subject to the sanctions associated with school improvement, corrective action, or restructuring.

LEAs. In instances where a Title I-A LEA fails to make AYP for two consecutive years, the SEA must identify it for **LEA improvement** and require the LEA to develop and implement a new or revised LEA education plan, with technical assistance provided by the state. If two more years pass without the LEA making AYP, the SEA must identify it for **corrective action** by the end of the school year. Corrective action must consist of at least one of the following activities: deferring programmatic funds or reducing administrative funds; implementing a new curriculum; replacing staff relevant to the LEA not making AYP; removing schools from the jurisdiction of the LEA; placing the LEA under receivership or trusteeship; abolishing or restructuring the LEA; or (in conjunction with one of the aforementioned activities), authorizing students attending a school in that LEA to transfer to an eligible public school in another LEA, with transportation costs provided by the sending LEA. SEAs also *may* implement the requirements of corrective action for an LEA that has been identified for improvement.

Sanctions for LEAs may be delayed for up to one year if the LEA makes AYP for a single year, or if failure to make AYP is due to unforeseen circumstances, such as a natural disaster or a significant decline in financial resources of the LEA. Once an LEA makes AYP for two consecutive years, it is no longer identified for improvement nor subject to corrective action.

Assistance for Local School Improvement. Currently, under ESEA § 1003(a) states are to reserve 4% of their total allocations for school improvement grants under ESEA Title I-A; however, grants to individual LEAs are not supposed to be reduced compared to the previous year as a result of reserving these funds in what amounts to a "hold harmless" provision. Also, under ESEA § 1002(i), such sums as may be necessary are authorized to be appropriated for awards by the Secretary to states for subgrants to LEAs for assistance for school improvement. Subgrants must be used by LEAs to support school improvement and recognition as required under ESEA §§ 1116 and 1117; and priority in awarding subgrants must go to LEAs with the lowest achieving schools. Funds have never been appropriated for this program. In its FY2007 budget request, the Administration has requested \$200 million for school improvement; and has proposed overriding the hold harmless provision. It also has proposed allowing states to use these funds for school improvement without subgranting funds to LEAs.

Reports

States and LEAs are required to prepare annual report cards containing academic achievement information for the state, LEAs, and schools, and must make them publicly available. LEAs also are required to provide parents of students attending Title I-A schools with information on the professional qualifications of the student's teachers. Annual report cards must, at a minimum, contain the following information:

- information on student achievement at each proficiency level on state academic assessments, in the aggregate and disaggregated according to each student subgroup;
- a comparison between actual student achievement levels and the state's AYP goal, for each student subgroup;
- the percentage of students not tested, in the aggregate and disaggregated by student subgroup;
- trends in student achievement in each subject area for each grade level assessed, for the most recent two-year period;
- aggregate information on any other indicators used in determining AYP;
- secondary school graduation rates;
- AYP data for LEAs, including the number and names of schools identified for school improvement; and
- information on the professional qualifications of teachers.

Each year, states are required to prepare reports for the Secretary containing information on the implementation of academic assessments; student academic achievement, in the aggregate, and disaggregated by student subgroup; information on the acquisition of English proficiency by students with limited English proficiency; information on each school identified for school improvement; the number of students and schools participating in public school choice and supplemental educational services; and information on teacher quality, including the percentage of classes being taught by highly qualified teachers at the state, LEA, and school levels. The Secretary is required to compile the data reported by states into a report to be submitted to the House Committee on Education and the Workforce and the Senate Committee on Health, Education, Labor, and Pensions.

Implementation Status

States were required to establish their accountability systems for the 2002-2003 school year. On June 10, 2003, the Secretary of Education announced that each state had an approved accountability plan. The ESEA also specified that the accountability status of schools and LEAs determined under IASA as of the last day prior to enactment of the ESEA would carry over under ESEA. Thus, if a school or LEA had been identified for improvement as of January 7, 2002, it would continue to be so identified for the 2002-2003 school year.³¹ Similar requirements applied to

³¹ However, if a school was identified for improvement or corrective action prior to
(continued...)

a second year of school improvement and corrective action for schools and LEAs. States were required to begin applying sanctions to such schools and LEAs during the 2002-2003 school year.

In 2005, ED published its first Annual Report to Congress on the implementation of the NCLBA. This report is based largely on information submitted to ED in state reports. The annual report shows that nationwide, during the 2002-2003 school year, a total of 46,926 students participated in public school choice, transferring from 1,772 schools that had been identified for school improvement or corrective action to openings made available in 2,105 schools.³² Also, during school year 2002-2003, a total of 116,626 students attending 2,194 schools received supplemental educational services.³³ Nationwide figures are not available on state Academic Achievement Awards Programs.

Data on Schools and LEAs Identified as Failing to Meet AYP. A substantial amount of data has become available on the number of schools and LEAs that failed to meet the AYP standards of the NCLBA based on assessments administered during the 2002-2003, 2003-2004, and 2004-2005 school years. A basic problem with almost all such reported data is that they have generally been incomplete and subject to change. The currently available data reports are discussed below in two categories: reports focusing on the number and percentage of schools failing to meet AYP standards for *one or more years* versus reports on the number and percentage of public schools identified for school improvement — i.e., they had failed to meet AYP standards for *two consecutive years (and any additional years, without subsequently making AYP for two consecutive years)*.

Schools Failing to Meet AYP Standards for One Year. Compilations of AYP results for a majority of states for the 2002-2003 through 2004-2005 school years were published in December 2004 and 2005 by *Education Week*.³⁴ While national aggregate comparisons are not possible, due to the number of states for which data were missing for one or more years, these data continue to reflect a pattern of wide variation among states in the percentage of public schools failing to meet AYP standards. Among states providing results, the percentage of public schools failing to meet AYP standards based on assessment results in the 2004-2005 school year ranged from 2% (Wisconsin) to 66% (Hawaii). For 48 states and the District of Columbia, the average share of schools failing to meet AYP standards was 26%. For the 46 states where such a comparison is possible, based on these data, the

³¹ (...continued)

enactment of NCLBA and it made its second consecutive year of AYP during the 2001-2002 school year, it was not required to provide public school choice or supplemental educational services during the 2002-2003 school year.

³² U.S. Department of Education, *No Child Left Behind Act of 2001 Annual Report to Congress*, Feb. 2005, pp. 13-16, available at [<http://www.ed.gov/about/reports/annual/nclbrpts.html>], visited Apr. 14, 2006.

³³ *Ibid.*, pp. 13-14, 17-18.

³⁴ See “Taking Root,” *Education Week*, Dec. 8, 2004, p. 1; and “Room to Maneuver,” *Education Week*, Dec. 14, 2005, p. S1.

percentage of public schools failing to make AYP increased between 2003-2004 and 2004-2005 in 24 states, remained the same in 2 states, and declined in the remaining 20 states. This is largely a reversal of the pattern of change between 2002-2003 and 2003-2004; when among the 36 states where a comparison was possible, the percentage of public schools failing to make AYP increased in only 5 states, remained the same in one state, and declined in 30 states.

More recently, in February 2006, data on the number of schools failing to meet AYP standards based on assessment results for the 2004-2005 school year were published in *Education Daily*.³⁵ Based on data collected from all states except Arkansas, it was reported that 22,868 schools, constituting 25.6% of all public schools, failed to meet AYP standards for 2004-2005, a finding consistent with that of the *Education Week* report discussed above. Other reported results were also similar to those described in the preceding paragraph.

Schools Failing to Meet AYP Standards for Two Consecutive Years (and Any Additional Years). The most recent and complete published data on schools identified for improvement appears in the February 2006 *Education Daily* article discussed above. According to this survey, 11,524 schools, or 12.9% of all public schools, were identified as needing improvement based on assessment results for the 2004-2005 and preceding school years. In several states, this group included at least some non-Title I schools. With respect to the various stages of school improvement, a total of 3,757 schools had failed to meet AYP standards for two consecutive years, 3,696 for three consecutive years, 1,254 for four consecutive years, and 1,847 for five or more consecutive years.

ED, in its “National Assessment of Title I: Interim Report,” published in February 2006, reported that 13% of all public schools were identified for improvement based on assessment results through the 2003-2004 school year. This included 9,028 Title I-A schools, or 18% of all Title I-A schools. Schools most likely to be identified were those large, urban LEAs, schools with high pupil poverty rates, and middle schools.

LEAs Failing to Meet AYP Standards. While most attention, in both the statute and implementation activities, thus far has been focused on application of the AYP concept to schools, a limited amount of information is becoming available about LEAs that fail to meet AYP requirements, and the consequences for them. According to the *Education Daily* survey referred to above, 3,281 LEAs, or 23.7% of all LEAs, failed to meet AYP standards on the basis of assessment results for the 2004-2005 school year. Of these, 1,712 LEAs (12.4% of all LEAs), were identified for improvement as a result of failing to meet AYP standards for two or more consecutive years.

³⁵ “Data analysis finds more schools subject to sanctions,” *Education Daily*, Feb. 16, 2006, pp. 1-2.

More recently, the Year 4 report of the Center on Education Policy (CEP) on No Child Left Behind implementation³⁶ found that an estimated 20% of all LEAs were identified as needing improvement based on assessment results for the 2004-2005 and immediately preceding school years.³⁷ According to this report, the odds of being identified for improvement were much greater for urban (50% identified) LEAs than for rural (11%) or suburban (26%) LEAs.

Implementation Issues

A number of issues have arisen as states and LEAs have proceeded to implement the ESEA Title I-A accountability provisions. Some of the most notable issues are discussed below.

Identification of Schools and LEAs for Improvement. Over the past several years, states have sought, and in many cases have had approved by ED, changes to their state accountability plans. In most instances, these changes have facilitated a relaxation of accountability requirements. A result has been that some schools and LEAs that would have been identified for improvement under state plans as initially approved might not be so identified under amended versions of state plans. Examples of approved changes include the use of confidence intervals, increasing the minimum subgroup sizes used to calculate AYP, and specifying that LEAs need to fail to make AYP for two consecutive years in the same subject area and across each of the elementary, middle, and high school grade spans in order to be identified for improvement or that schools should be identified for improvement only if they fail to make AYP in the same subject area for two consecutive years.³⁸

The expansion of the minimum subgroup sizes to large numbers, such as 40 students or 10% of school enrollment, may have the effect of excluding students from subgroups with small populations from consideration in the determination of AYP at the school level. However, at the LEA level, it is more likely that there will be sufficient students to include more subgroups in the determination of AYP. This may result in LEAs that have no schools identified for improvement being identified for improvement, if low-achieving students in subgroups with small populations are dispersed across several schools. These LEAs incur no obligation to provide public school choice or supplemental educational services to their students because these sanctions are only applicable at the school level.

Public School Choice. LEAs were first required to provide public school choice to students attending schools identified for school improvement beginning with the 2002-2003 school year. In instances where public school choice is required

³⁶ Center on Education Policy, "From the Capital to the Classroom: Year 4 of the No Child Left Behind Act," Mar. 2006, pp. 56, 62.

³⁷ While there were AYP requirements for LEAs under the IASA, the application of these requirements by states was apparently quite uneven, and the provisions for consequences for LEAs that failed to meet AYP standards for multiple years were minimal.

³⁸ Naomi Chudowsky and Victor Chudowsky, *States Test Limits of Federal AYP Flexibility*, Center on Education Policy, Nov. 16, 2005, pp. 13-15.

to be offered to students at a particular school, it must be made available to all students, regardless of their family income or academic achievement level. However, LEAs are required to give priority to the lowest-achieving students from low-income families. LEAs also may not deny students the opportunity to transfer to another school on the basis of a lack of capacity. In instances where there are no eligible schools to which a student could transfer (e.g., all schools at the applicable grade level have been identified for school improvement, corrective action, or restructuring), then the LEA must, to the extent practicable, establish a cooperative agreement with one or more LEAs in the area (including public charter schools) to provide school choice transfer options.

Concerns about the implementation of public school choice include the concern that information identifying schools for improvement has in many instances been released during the summer only a short time before the new school year was about to begin, and as a consequence parents have limited time to select new schools for their children to attend. Also, as more schools have been identified for school improvement, corrective action, or restructuring, some LEAs have experienced difficulty in making space available in schools that have not been identified for improvement — many of which were already overcrowded. Meanwhile, LEAs with few or no schools identified for improvement may decline to accept transfers from neighboring districts. In very rural areas, public school choice can be difficult to implement because of the great distances between schools. Finally, concerns have been raised that despite provisions designed to give priority for public school choice to low-achieving and low-income students, higher-achieving students and those from moderate to upper-income families may be most alert to, or more willing to take advantage of, school transfer options, thus leaving lower achieving students behind in under-performing schools.³⁹

Supplemental Educational Services. Beginning with the 2002-2003 school year, students attending schools identified for a second year of school improvement, corrective action, or restructuring have been required to be offered the opportunity to receive supplemental educational services. Issues regarding the implementation of SES include the process through which parents are notified of the availability of supplemental educational services; the availability of services to students with special needs or with limited-English proficiency; approval of SES providers and the negotiation of contracts with LEAs; student usage of supplemental educational services; the sequencing of school choice and SES as sanctions; and how providers are held accountable for performance.

During the first few years of NCLBA implementation, information on schools being required to offer supplemental educational services has often been made available late in the summer or even after the start of the school year.⁴⁰ Also, notice of the opportunity to receive these services has in many instances not been provided

³⁹ Maria Glod, “High Achievers Leaving Schools Behind; Transfers in Fairfax and Elsewhere Were Meant for Struggling Students,” *The Washington Post*, Nov. 10, 2004, p. A01.

⁴⁰ Michael Casserly, *No Child Left Behind: A Status Report on Choice and Supplemental Services in America’s Great City Schools*, Council of Great City Schools, Jan. 2004.

to parents in a clear and concise manner. It appears that in some LEAs, this has resulted in fewer students receiving supplemental educational services than might be entitled to receive them.⁴¹ The availability of providers has also been a concern in some LEAs, particularly in rural areas. Additionally, some providers may not be willing or able to offer services in remote areas or in schools in which their services may be selected by only one or two students. Some providers may not be able to serve students with special needs or limited-English proficiency. However, in instances where no providers are available to serve students with special needs or limited-English proficiency, the LEA must arrange for these students to be served, either by providing services directly or through a contract — even if the LEA is not otherwise approved as an SES provider.

Responsibility for approving entities as eligible SES providers resides with SEAs, although contracts for the provision of services must be negotiated between each provider and each LEA in which it will offer services. Regulations promulgated by ED prohibit schools and LEAs that have been identified for improvement from being approved as SES providers. SES providers may not be required to hire only staff who meet the highly qualified teacher and paraprofessional requirements of ESEA § 1119. The process of approving and negotiating contracts for providers has been challenging for many SEAs and LEAs, as each LEA has unique needs and requirements, and the amount of funding available per student differs from one LEA to another. The conditions that SEAs and LEAs may impose on SES providers is often raised as an implementation issue. During the course of the past year, ED has issued a number of policy letters clarifying the types of conditions that SEAs and LEAs may impose. While SEAs have overall responsibility for overseeing SES providers, LEAs may impose certain conditions on providers, such as requiring background checks on personnel, requiring liability insurance, and charging for the use of school facilities.⁴²

The sequencing of public school choice and supplemental educational services as sanctions has been raised as a policy issue. Intuitively, some believe that it may make sense to offer supplemental educational services prior to being required to offer public school choice. In 2005, the Secretary of Education announced that flexibility in the provision of supplemental educational services would be provided in limited circumstances through SES Pilot Programs.⁴³ Under the SES Pilot Programs, ED has approved a reversal in the sequencing of SES and school choice as sanctions in four LEAs in Virginia, and is providing additional states the opportunity to apply for this

⁴¹ Gail L. Sunderman and Jimmy Kim, *Increasing Bureaucracy or Increasing Opportunities? School District Experience with Supplemental Educational Services*, (Cambridge, MA: The Civil Rights Project, Harvard University, Feb. 2004), pp. 19-21, at [http://www.civilrightsproject.harvard.edu/research/esea/increasing_bureaucracy.pdf], visited Apr. 14, 2006.

⁴² U.S. Department of Education, Office of Elementary and Secondary Education and Office of Innovation and Improvement, “Supplemental Educational Services (SES) Policy,” at [<http://www.ed.gov/policy/elsec/guid/stateletters/index.html>], visited June 16, 2006.

⁴³ U.S. Department of Education, *Supplemental Educational Services Pilot Programs*, available at [<http://www.ed.gov/nclb/choice/help/sespilot.html>], visited Apr. 12, 2006.

flexibility for the 2006-2007 school year.⁴⁴ Also as part of the SES Pilot Programs, ED has granted three LEAs (Boston, Chicago, and New York City) the flexibility to remain as SES providers even though they have been identified for improvement. In addition, ED has clarified that certain entities loosely affiliated with LEAs may be providers of supplemental educational services even if the LEA has been identified for improvement. Examples of such entities include 21st Century Community Learning Centers, community education programs, and parent information and resource centers.⁴⁵ Finally, while SEAs are required to withdraw approval from providers that fail for two consecutive years to increase student academic proficiency, little is known about the effectiveness of particular SES providers. It is expected that better data on the effectiveness of supplemental educational services will become available as LEAs participating in SES Pilot Programs are required to provide ED with achievement data for students receiving supplemental educational services.

⁴⁴ U.S. Department of Education, Elementary and Secondary Education, NCLB Policy Letters to States: Supplemental Educational Services, Flexibility Agreements, available at [<http://www.ed.gov/policy/elsec/guid/stateletters/index.html#ses>], visited Apr. 12, 2006.

⁴⁵ U.S. Department of Education, Office of Elementary and Secondary Education and Office of Innovation and Improvement, "District-affiliated entities becoming SES providers," May 10, 2006, at [<http://www.ed.gov/policy/elsec/guid/stateletters/choice/ses051006.html>], visited June 16, 2006.

Section 5. Education of Limited English Proficient Pupils⁴⁶

The No Child Left Behind Act of 2001 (NCLBA) made several changes to ESEA provisions regarding the education of limited English proficient (LEP) students. One major change concerns the distribution and use of funds for LEP student instruction. Namely, the NCLBA converted the competitive grant programs for this purpose to a single formula grant program based on enrollment of LEP and immigrant students. A second set of changes enacted by the NCLBA fall under the category of assessment and accountability. As mentioned earlier in this report, these changes include requirements for annual assessments of LEP students' English language proficiency, language accommodations for LEP students' academic assessments in subjects other than English, and separate adequate yearly progress (AYP) calculations for LEP students as a subgroup.

Language Acquisition State Grants

Prior to the NCLBA, Title VII of the ESEA supported two major competitive grant programs that awarded funds to LEAs specifically for the education of LEP and immigrant students and a third competitive grant program to Institutions of Higher Education (IHEs) for teacher professional development in this area. Under the NCLBA the first two of these programs were replaced by a single formula grant program; provided that the total appropriation for this purpose exceeds \$650 million (which has been the case since the first grants were awarded in FY2002).

This new formula grant program, the Language Acquisition State Grant program (ESEA, Title III), distributes grants to states according to their share of the LEP and recent immigrant populations. The formula allocates 80% of the program's funds according to the population of LEP students and 20% according to the population of recently arriving immigrants. The Secretary is given the authority to determine the most accurate data for these allocations from either state reported enrollment counts or from data collected by the U.S. Census Bureau.

LEAs and other eligible recipients of pre-NCLBA Title VII multi-year grants continue to receive funds until their grants expire. These continuations as well as three reservations (for national activities and schools serving either Native American and Alaska Native students or located in U.S. territories) are set aside before the new formula state grants are calculated. Subgrants to LEAs are then calculated by the SEA according to each LEA's share of the state's LEP pupils; SEAs use enrollment data for these allocations.

The NCLBA also made changes to the activities supported by these grants. SEAs and LEAs were given greater flexibility in the design and administration of language instructional programs. The law also removed or weakened provisions that

⁴⁶ This section was written by Jeffrey J. Kuenzi. For more information on this issue, see CRS Report RL31315, *Education of Limited English Proficient and Recent Immigrant Students: Provisions in the No Child Left Behind Act of 2001*, by Jeffrey J. Kuenzi.

encouraged bilingual instruction methods (i.e., curricula that develop proficiency in English as well as students' native language). Instead, the law placed emphasis on annual measurable increases in English language proficiency.

Implementation Status. All states, including Puerto Rico and the District of Columbia, submitted plans for implementing Title III programs beginning in 2002.⁴⁷ According to the Secretary's report on the implementation of Title III, the new formula grant awarding process appears to have been implemented without major problems.⁴⁸ However, after the issuance of the Secretary's report, a problem arose in the allocation of funds in the 2005 fiscal year because some states experienced sizable changes in their award amount from the previous year.

Grants were distributed to states in fiscal years 2002, 2003, and 2004 based on the Census 2000 LEP and immigrant counts. Starting in 2005, these state grants were allocated using LEP and immigrant counts from the American Community Survey (ACS). The distribution of FY2005 grants shows large changes in the amount awarded to states compared to FY2004 grants. The fluctuation between FY2004 and FY2005 is in contrast to relative stability from FY2002 to FY2003 and from FY2003 to FY2004. A handful of states experienced a decrease in funding between FY2004 and FY2005; five states lost more than 10% and one lost over 20%. These declines occurred in spite of an 8% increase in the funds available for formula distribution (due to a 31% decrease in pre-NCLBA Title VII continuation award obligations which offset a 1% decrease in overall appropriations).⁴⁹

Implementation Issues. Large year-to-year fluctuations in Title III awards could pose problems for program implementation. Such shifts reflect instability in the underlying population data on which the formula is based. Instability in the current LEP data provided by the ACS derives from two factors: (1) the small and concentrated nature of LEP populations, and (2) the failure to fully implement the survey's sample in 2003 as originally planned.⁵⁰ Once the survey is fully implemented, it is expected that the LEP population estimates will become more stable from year to year. However, full implementation and release of data will likely not occur in time for allocation of FY2007 awards.

In the meantime, year-to-year fluctuations of the magnitude just discussed might make it difficult for schools to provide service continuity to LEP students. Schools

⁴⁷ U.S. Department of Education, *Biennial Evaluation Report to Congress on the Implementation of the State Formula Grant Program* (Washington, D.C.: 2005).

⁴⁸ U.S. Department of Education, *Biennial Evaluation Report to Congress on the Implementation of Title III, Part A of ESEA* (Washington, D.C.: 2005).

⁴⁹ Initial estimates for FY2006 (released Oct. 25, 2005) revealed even larger shifts and were later revised to minimize them. The most recent estimates, dated May 12, 2006, are available at [<http://www.ed.gov/about/overview/budget/tables.html>].

⁵⁰ The survey employs a county-based sampling strategy and will not include all counties until it is fully implemented. The Census Bureau's plan for full implementation to occur for the 2005 survey year would make LEP data available in the fall of 2006. For more information on ACS sampling issues, see [<http://www.census.gov/acs/www/Downloads/OpsPlanfinal.pdf>], visited June 19, 2006.

with a small number of LEP students and a single teacher qualified to teach them might not be able to retain that teacher in consecutive years under such budget conditions. An LEA that in a given year had an LEP population large enough to exceed the minimum grant requirement may in the next year fall below that requirement and be required to enter into a consortium of LEAs that share service provision. Fluctuation in the amount of SEA administrative set-asides may also disrupt professional development, program evaluation, and technical assistance.

Another issue concerns availability of qualified bilingual teachers. Many LEAs report being unable to fill teaching positions in LEP classrooms. One study found the LEP teacher shortage to be the number one complaint from LEAs in regard to implementing Title III.⁵¹ Once English language assessments are in place, professional development funds used for this purpose may be fruitfully redirected to the current professional development grant program.

LEP Assessments and Accountability

In addition to the general Title I assessment and accountability provisions, there are specific provisions that apply to LEP students. As briefly mentioned earlier, LEP students must be annually assessed for English language proficiency, may be given accommodations for academic assessments in subjects other than reading/language arts, and must be treated as a separate subgroup for state, LEA, and school AYP calculations.

States are required to demonstrate that their LEAs have conducted annual assessments of LEP students' English language proficiency beginning with the 2002-2003 school year. These assessments must include measures of students' proficiency in speaking, reading, writing, listening, and comprehension of English. Assessments used for this purpose need not be uniform across all LEAs in a state. If a state allows multiple English language proficiency assessments, the SEA should: (1) set technical criteria for the assessments; (2) ensure the assessments are equivalent to one another in their content, difficulty, and quality; (3) review and approve each assessment; (4) ensure that the data from all assessments can be aggregated for comparison and reporting purposes, as well as disaggregated by English language proficiency levels and grade levels; and (5) ensure that the assessments are aligned with the state English language proficiency standards. SEAs and LEAs may use Title III funds as well as funds they receive by formula under ESEA section 6111 (Grants for State Assessments Program) or competitively under 6112 (Grants for Enhanced Assessment Instruments Program) for developing English language assessments (these programs were discussed in Section 1 of this report).

States must establish annual measurable achievement objectives (AMAOs) for LEP students' development and attainment of English language proficiency. AMAOs must include increases in the number or percentage of children in an LEA making progress in learning English and achieving English proficiency. AMAOs must also be in line with the state's AYP objectives as they apply to LEP students.

⁵¹ Center on Education Policy, *From the Capital to the Classroom: Year 3 of the No Child Left Behind Act* (Washington, D.C.: Mar. 2005), p. 185.

Each state must ensure that all LEAs in the state meet its AMAOs for LEP attainment of English language proficiency. If an LEA repeatedly misses their AMAOs, the state must evaluate whether they should continue to receive funds. Continued failure will lead to state intervention, and can result in loss of funds to the LEA.

States must also include all LEP students in their state academic assessment system. Inclusion of LEP students may involve providing appropriate linguistic accommodations and/or using an assessment in the student's native language that is aligned to the state content and achievement standards. However, after three years of attending a school in the United States (except for those residing in Puerto Rico), students must be assessed for reading/language arts achievement in English. LEAs can, on an individual basis, conduct these assessments in a language other than English for up to two additional years for students who have not yet reached a level of English proficiency sufficient to yield valid and reliable information on what the student knows and can do on an assessment written in English.

The results of academic assessments must be reported in the aggregate for all students as well as disaggregated by four separate subgroups: (1) economically disadvantaged, (2) limited English proficient, (3) disabled, and (4) racial/ethnic group. States must establish separate AYP targets for LEP students' achievement in the academic areas of reading/language arts and mathematics.

Implementation Status. ED reports that states have made "significant progress" in implementing programs to support LEAs in providing English language assessments. Although many states had already developed language assessment systems prior to enactment of the NCLBA, many other states had not, due in part to low or recent enrollments of substantial numbers of LEP students. During 2003 and 2004, 35 states used grants under ESEA Title VI to develop English language standards and assessments.⁵² By June 2004, 40 states reported having English language assessments; although at different stages of readiness.⁵³ Some states developed their own English language assessments, some contracted with commercial assessment developers, and others joined multi-state consortia that have developed assessments. ED also reported that, by February 2005, all states had developed their AMAOs.

With the flexibility to extend language accommodations for academic assessments an additional two years, 2007-2008 is the first school year in which LEP students (who began receiving Title III services in 2002) will be required to take assessments in English. ED indicates that academic assessments have been implemented relatively smoothly thus far; however, "in many cases, [states] were not able to implement the data system fully" to report the results of these assessments.⁵⁴

⁵² U.S. Department of Education, *Biennial Evaluation Report to Congress on the Implementation of Title III, Part A of ESEA* (Washington, D.C.: 2005), p. 6.

⁵³ Center on Education Policy, *From the Capital to the Classroom: Year 3 of the No Child Left Behind Act* (Washington, D.C.: Mar. 2005), p. 188.

⁵⁴ U.S. Department of Education, *Biennial Evaluation Report to Congress on the Implementation of Title III, Part A of ESEA* (Washington, D.C.: 2005).

By the end of 2004, some states had not yet made disaggregated data on LEP students available. According to a December 2004 issue of *Education Week*, eight states indicated that they were unable to report disaggregated data for the 2002-2003 and 2003-2004 school years.⁵⁵ In its most recent Annual Report to Congress (published in February of 2005), ED indicated that submissions of eight states were still under review.⁵⁶ Presumably, these states would be unable to establish 2002-2003 starting points and determine whether the LEAs in the state reach their AMAO targets. However, in the data appendices accompanying the 2005 report, disaggregated data for 2002-2003 appear for the LEP subgroup in every state.

In response to concerns that the transient nature of the LEP subgroup would prevent states from reaching AYP goals, the Secretary issued guidance in June 2004 that provided additional flexibility in the treatment of the LEP subgroup. Specifically, students determined to be LEP would not have their scores counted in AYP calculations until after they have been in school in the United States for at least 10 months. In addition, LEP students that have attained proficiency in English may continue to be counted in the LEP subgroup for another two years.

Implementation Issues. The requirement that LEP students no longer receive accommodations when taking academic assessments after their third year in U.S. schools may not be appropriate at all grade levels. Many analysts point to research suggesting that non-English speakers' ability to attain English proficiency diminishes with age. Older LEP students may continue to have difficulty taking academic assessments at their grade-level in English even after three years in U.S. schools. Some argue that the two additional years of flexibility in determining when LEP students should be tested in English is insufficient.

The group size issue, discussed earlier in this report, is particularly relevant in the application of AYP requirements to LEP students. In some instances, the state may set a minimum group size at a level so high that few LEAs or schools are held accountable for properly serving LEP students. On the other hand, setting group size too low may make it difficult for LEAs, particularly those with diverse student populations, to meet NCLBA's annual requirements for improvement.

States face additional difficulty implementing AYP requirements for LEP students because they are likely to fall into several subgroups. There exists a high correlation between membership in the LEP subgroup and two other subgroups — namely, Hispanic and the economically disadvantaged. In light of this, some have advocated that those classified in two or more categories should be counted only in one category or weighted proportionally into more than one category. For example, a student who is LEP, Hispanic, and poor could have their scores given one-third weight in each subgroup.

⁵⁵ Lynn Olson, "Taking Root: Despite ongoing complaints, the federal No Child Left Behind Act has become implanted in the culture of America's public education system," *Education Week*, Dec. 8, 2004.

⁵⁶ The 2005 Annual Report to Congress and associated appendices are available at [<http://www.ed.gov/about/reports/annual/nclbrpts.html>], visited June 19, 2006.

Section 6. Teacher Quality⁵⁷

The No Child Left Behind Act of 2001 (NCLBA) made two major amendments to the teacher quality provisions of the Elementary and Secondary Education Act of 1965 (ESEA). First, the NCLBA established a requirement that all teachers be *highly qualified* by the end of the 2005-2006 school year. Second, the NCLBA replaced the ESEA Eisenhower Professional Development and Class Size Reduction programs with a new Teacher and Principal Training and Recruiting Fund.

Requirement That All Teachers Be Highly Qualified

Each state educational agency (SEA) receiving ESEA Title I-A funding must have a plan to ensure that no later than the end of the 2005-2006 school year, all teachers teaching in core academic subjects within the state will meet the definition of a *highly qualified* teacher (HQT).

As defined in the ESEA, Section 9101(23), to be highly qualified, a **public elementary or secondary school teacher** must meet the following requirements:

- **Every public elementary or secondary school teacher**, regardless of whether he or she is new or experienced, (1) must have full state certification (a charter school teacher must meet the requirements in the state charter school law), (2) must not have had any certification requirements waived on an emergency, temporary, or provisional basis, and (3) must have at least a baccalaureate degree.
- Each **new public elementary school teacher** must pass a rigorous state test demonstrating subject knowledge and teaching skills in reading, writing, math, and other basic elementary school curricular areas (such tests may include state certification exams in these areas).
- Each **new public middle or secondary school teacher** must demonstrate a high level of competency in all subjects taught by: (1) passing rigorous state academic tests in those subjects (may include state certification exams in those subjects), **or** (2) completing an academic major (or equivalent course work), graduate degree, or advanced certification in each subject taught.
- Each **experienced public elementary, middle, or secondary school teacher** must meet (1) the requirements just described for a new teacher (depending upon his or her level of instruction), **or** (2) demonstrate competency in all subjects taught using a “high objective uniform state standard of evaluation” (HOUSSE).⁵⁸

⁵⁷ This section was written by Jeffrey J. Kuenzi. For a discussion of teacher quality issues in general, see CRS Report RL33333, *A Highly Qualified Teacher in Every Classroom: Implementation of the No Child Left Behind Act*, by Jeffrey J. Kuenzi.

⁵⁸ Among other requirements, the state-set HOUSSE must provide objective information about teachers’ content knowledge in all subjects taught; be aligned with challenging state (continued...)

Implementation Status. The NCLBA required each state to submit its plan to meet the HQT deadline along with its Consolidated State Application for State Grants on July 12, 2002.⁵⁹ This plan must establish annual measurable objectives for each local educational agency (LEA) and school that, at a minimum, include annual increases in the percentage of HQTs at each LEA and school to ensure that the 2005-2006 deadline is met, and an annual increase in the percentage of teachers receiving high quality professional development. In turn, each LEA must also have a plan to meet this deadline. In addition, beginning with the first day of the 2002-2003 school year, any LEA receiving Title I funding must ensure that all teachers hired after that date who are teaching in Title I-supported programs are highly qualified.

States and LEAs must also submit annual reports to ED describing progress on the state-set annual objectives. The most recent of these Consolidated State Performance Reports (CSPR), for the 2003-2004 school year, consisted of two parts. The first part, providing information on the status of the HQT requirement, was to be submitted to ED by January 31, 2005. Although states appear to have met the reporting deadline, significant problems with the detailed data requirements of the CSPR have prompted ED to delay enforcement of the 2005-2006 deadline.

In an October 21, 2005 policy letter to chief state school officers, ED reported widespread problems in state data systems and offered a series of regional data workshops to support states in collecting data.⁶⁰ The letter also announced additional flexibility in meeting the HQT deadline. The Secretary stated that the letter's purpose was "to assure you that States that do not quite reach the 100% goal by the end of the 2005-06 school year will not lose federal funds if they are implementing the law and making a good-faith effort to reach the HQT goal in NCLB as soon as possible." Instead, states that "meet the law's requirements and the Department's expectations in these areas but fall short of having highly qualified teachers in every classroom" would be given an additional year to reach the 100% goal.

Implementation Issues. Questions have been raised about the scope and application of the HQT requirements, the meaning of some of the requirements, and the ability of different kinds of LEAs to meet them. ED has sought to address some of these concerns through regulation, non-regulatory guidance, and other means. Early in the implementation of these provisions ED was asked whether they apply to *all* teachers, including vocational education teachers, special education teachers, or others not teaching core academic subjects. Final regulations for the Title I program published December 2, 2002, in the *Federal Register* clarify that these requirements only apply to core academic subject teachers. However, these requirements would

⁵⁸ (...continued)

academic and student achievement standards; be applied uniformly statewide to all teachers in the same subjects and grade levels; and consider, but not be based primarily on, time teaching those subjects. It may use multiple measures of teacher competency.

⁵⁹ Although some states have made their plans available to the public, the Secretary has yet to release the plans of any state.

⁶⁰ The Secretary's letter is available online at [<http://www.ed.gov/policy/elsec/guid/secletter/051021.html>].

apply to a vocational education teacher or a special education teacher providing instruction in a core academic subject.⁶¹

The final regulations also clarify that a teacher in an alternative certification program will have a maximum of three years in which to become fully certified without being in violation of the highly qualified requirements regarding certification. This allowance is made only for a teacher in an alternative certification program who is receiving high quality professional development, intensive supervision, and making satisfactory progress toward full certification.

In March of 2004, ED announced that additional flexibility could be applied in the implementation of the HQT requirements with regard to: teachers in small rural school districts, science teachers, and teachers teaching multiple subjects.⁶² In small rural districts, ED provided that teachers teaching core academic subjects who meet the highly qualified requirements in at least one of the subject areas they teach may have an additional three years to meet these requirements in the other subjects they might teach. For *current* teachers, this three-year grace period began with the 2004-2005 school year, meaning that rather than facing a deadline of the end of the 2005-2006 school year to be highly qualified in all core subjects taught, current rural teachers may have until the end of the 2006-2007 school year. For *newly hired* teachers, a full three-year grace period can be provided from the date of hiring. But those newly hired teachers will have to be highly qualified in one of their core subject areas when hired. States decide whether to offer this flexibility to eligible rural districts.

The flexibility announced in March 2004 modified earlier non-regulatory guidance (issued in January 2004) which stated that science teachers teaching more than one field of science (e.g., biology and chemistry) would have to be highly qualified in *each* of the fields being taught. Under the new flexibility, states determine whether science teachers need to be highly qualified in each science field they teach or highly qualified in science in general, based on how the state currently certifies teachers in these subject areas. Finally, ED allowed states to design their HOUSSE procedures to allow a teacher to go through the process a single time to demonstrate competency in multiple subjects. This new flexibility, along with other changes, were incorporated into revised non-regulatory guidance issued on August 3, 2005.⁶³

⁶¹ According to ESEA Section 9101(11), “The term ‘core academic subjects’ means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.”

⁶² A two page fact sheet on these policies is available on the web at [<http://www.ed.gov/nclb/methods/teachers/hqtflexibility.html>]. A more detailed letter to each of the chief state school officers, dated Mar. 31, 2004, is available at [<http://www.ed.gov/policy/elsec/guid/secletter/040331.html>], visited June 19, 2006.

⁶³ The most recent version of the ESEA Title II non-regulatory guidance is available on the Web at [<http://www.ed.gov/programs/teacherqual/guidance.doc>], visited June 19, 2006.

Teacher and Principal Training and Recruiting Fund

This new formula grant program replaced the former Eisenhower Professional Development and Class Size Reduction formula grant programs. The allocation formula provides each state with a base guarantee of funding equal to the amount it received for FY2001 under the Eisenhower and Class Size Reduction programs. Any excess funding is allocated by formula among the states based 35% on school-aged population (5-17), and 65% on school-aged population in poverty. The allocation of subgrants to LEAs follows the same procedure except that the excess is distributed by a formula based 20% on school-aged population, and 80% on school-aged population in poverty. Additional grants under this program are awarded competitively to partnerships lead by State Agencies of Higher Education (SAHEs) that must include a higher education institution and its division preparing teachers and principals; a higher education school of arts and sciences; and a *high-need* LEA.⁶⁴

Partnerships must use their funds for professional development in the core academic subjects for teachers, highly qualified paraprofessionals, and principals. LEAs are authorized to use their funding for one or more of various specified activities. Among the authorized activities are the following:

- Assistance to schools in the recruitment and retention of highly qualified teachers, principals, and, under certain conditions, pupil services personnel;
- Assistance in recruiting and hiring highly qualified teachers through such means as scholarships and signing bonuses; use of these teachers to reduce class sizes;
- Initiatives to increase retention of highly qualified teachers and principals, particularly in schools with high percentages of low-achieving students, through mentoring, induction services during the initial three years of service, and financial incentives for those effectively serving all students;
- Professional development, including professional development that involves technology in teaching and curriculum and professional development delivered through technology;
- Improvement of the quality of the teaching force through such activities as tenure reform, merit pay, and teacher testing in their subject areas; and
- Professional development for principals and superintendents.

Implementation Status. Since the grant allocation procedures of the new program are largely based on those of the Eisenhower and Class Size Reduction programs, the distribution of funds to SEAs and LEAs has occurred smoothly and according to the requirements of the law. That is, a higher proportion of funds have

⁶⁴ In this program, a high-need LEA is defined as one with at least 10,000 poor children or a child poverty rate of at least 20%, and in addition, has either a high percentage of out-of-field teachers or a high percentage of teachers with emergency, provisional, or temporary certificates.

been directed to large and high-poverty districts. Although the new program allows for a much wider set of activities, ED reports that most of the Title II funds have been spent on class size reduction and professional development.⁶⁵ Districts reported spending 58% of their Title II funds on teacher salaries to reduce class size and 25% on professional development. Preliminary evidence from a more recent ED survey of grantees indicates that funds are being increasingly shifted toward the latter.

Implementation Issues. In a departure from the Eisenhower program, which targeted professional development primarily toward math and science, districts are using their Title II funds to support professional development in a number of areas. ED reported that LEAs are spending 39% of their Title II funds for professional development in math and science, an equal share (39%) in reading and English, 8% in history, and 7% in technology. ED officials have stated that this shift is likely a response to the HQT requirements and the need to reduce the number of out-of-field teachers in other fields.⁶⁶

A shift away from math and science professional development in the Title II program might concern some observers who see serious deficits in the U.S. educational system in these areas. The National Academy of Sciences recently released a report on this issue in which upgrading current math and science teachers' skills was among its top recommendations.⁶⁷ The flexibility provided by ED which eases the HQT requirements for science teachers (mentioned earlier) may be seen by some as a loophole that will allow districts to hire and retain sub-par teachers.

⁶⁵ U.S. Department of Education, Policy and Program Studies Service, *Improving Teacher Quality in U.S. School Districts: Districts' Use of Title II, Part A, Funds in 2002-2003*, Policy and Program brief, Feb. 6, 2004, available at [<http://www.ed.gov/programs/teacherqual/uof.doc>], visited June 19, 2006.

⁶⁶ Nov. 28, 2005 phone conversation with Robert Stonehill, Deputy Director, Academic Improvement and Teacher Quality Programs Office of Elementary and Secondary Education, U.S. Department of Education.

⁶⁷ "Rising Above the Gathering Storm: Energizing and Employing America for a Brighter Economic Future," a report by the National Academies Committee on Science, Engineering, and Public Policy, (Washington, D.C.: National Academies Press, Oct. 2005).

Section 7. Reading Skills Improvement Grants⁶⁸

Reading First⁶⁹

The Reading First program was authorized as part of the Reading Skills Improvement Grants, Title I-B of the No Child Left Behind Act of 2001 (NCLBA). Reading First was drafted with the intent of incorporating the latest scientific understanding on what works in teaching reading to improve and expand K-3 reading programs to address concerns about student reading achievement and to try and reach children at younger ages.

The Reading First program includes both formula grants (states are allocated funds in proportion to the number of children, aged 5 to 17, who reside within the state from families with incomes below the poverty line) and targeted assistance grants to states.⁷⁰ For the first two years of the program, 100% of funds, after national reservations, was allocated to states as formula grants. States then competitively award grants to eligible local educational agencies (LEAs). LEAs that receive Reading First grants *shall* use those funds for the following purposes:

- Selecting and administering screening, diagnostic, and classroom-based instructional reading assessments;
- Selecting and implementing a learning system or program of reading instruction based on scientifically based reading research that includes the essential components of reading instruction;
- Procuring and implementing classroom instructional materials based on scientifically based reading research;
- Providing professional development for teachers of grades K-3, and special education teachers of grades K-12;
- Collecting and summarizing data to document the effectiveness of these programs, and to accelerate improvement of reading instruction by identifying successful schools;
- Reporting student progress by detailed demographic characteristics;
- Promoting reading and library programs that provide access to stimulating reading material.

⁶⁸ This section was written by Gail McCallion. For more information, see CRS Report RL33246, *Reading First: Implementation Issues and Controversies*, by Gail McCallion.

⁶⁹ For more information on the Reading First Program, see CRS Report RL31241, *Reading First and Early Reading First: Background and Funding*, by Gail McCallion.

⁷⁰ The NCLBA specifies that beginning with FY2004, 10% of funds in excess of the FY2003 appropriation or \$90 million, whichever is less, is to be reserved for targeted assistance state grants. Targeted assistance grants are intended to reward schools that are achieving the goals of increasing the percentage of 3rd graders who are proficient readers and improving the reading skills of 1st and 2nd graders.

Implementation Status. The Reading First program has required significant start up time on the part of states. Because the program is complex and many of its requirements are new, it has taken time for states and LEAs to put together the necessary staff, curriculum, assessment, and evaluation components for the program. By the end of October 2003, all states and the District of Columbia had received their FY2002 and FY2003 Reading First awards. The Virgin Islands received its first Reading First funds in September 2004. Reading First state grants are awarded for a six-year period, pending a satisfactory mid-term review. According to ED, only two states were able to distribute Reading First money to LEAs in the FY2002-FY2003 period. In FY2003-FY2004, 27 states conducted their first distribution of Reading First funds to LEAs, and in FY2004-FY2005, 24 additional states awarded their first Reading First grants to LEAs. Puerto Rico's situation is unique because it did not spend the first Reading First funds it received (for FY2003), and it declined funds for FY2004 because of disagreements with ED over instruction and methods to be employed. Puerto Rico is, however, apparently planning to reapply for FY2005 funding — it has until September 2006 to do so.⁷¹

The NCLBA specifies that a mid-term peer review of states' performance in the Reading First program be conducted after the completion of the program's third grant period (which would mean a review in the fall of 2005). Because of the time involved in initial implementation of the program, ED is making some adjustments to the time line. Since many states have insufficient data at this point for a useful review, ED will be conducting mid-term reviews on a rolling basis. This would allow all states to have participated in three grant cycles, as envisioned by the statute, before they undergo a mid-term peer review. Similarly, the awarding of the first targeted assistance grants was delayed so that there will be more states meeting the requirement of having one year of baseline data and two years of follow-up data showing improvement.⁷²

The Reading First program will be required to meet relatively extensive evaluation and reporting standards. In addition to mid-term reviews of states' performance, districts are required to track the progress of individual students, and states are required to submit annual evaluations to ED with data on overall school, district and state progress. ED has also contracted to have both an impact and implementation study of the program conducted. It is anticipated that the first report from the impact study, which is being conducted by Abt Associates and MDRC, will be available in late 2006. Preliminary data from the implementation study, which will be conducted by Abt Associates, will also be available in 2006.

Implementation Issues. Although evaluation data on the Reading First program will not be available until 2006, anecdotal information from states indicates that they believe the Reading First program has led to positive changes in areas such as research-based professional development, and availability of instructional

⁷¹ Based on an Apr. 15, 2005 conversation with Sandi Jacobs, a senior education program specialist with ED.

⁷² Massachusetts received the first targeted assistance award (of approximately \$3 million) in Sept. 2006.

resources and support services.⁷³

A June 2005 report issued by The Center on Education Policy (CEP) has provided data on the status of Reading First's implementation.⁷⁴ CEP's state surveys indicate that 40 out of 49 states perceive ED as strictly or very strictly enforcing the Reading First program. Interestingly, only the adequate yearly progress requirements in the NCLBA were reported by more states as being strictly or very strictly enforced by ED.

The CEP study also examined ED's administration of the state application process for Reading First grants. Many states were required to revise their initial application for Reading First grants one or more times before ultimately having their application accepted. The CEP found that in their final accepted applications, almost all states selected the same program for assessments (DIBELS),⁷⁵ and the same program (Consumer's Guide) for evaluating and choosing a reading curriculum.⁷⁶ CEP analysis of a sample of original and final applications from 10 states found that 4 of the 10 switched to DIBELS and the Consumers Guide after the initial review of their application.⁷⁷

Scientifically Based Research Requirements in the No Child Left Behind Act

The NCLBA has endorsed the use of scientifically based research (SBR) in funded activities, including over 100 references to the use of SBR in choosing instructional and assessment programs as well as for professional training programs, and other NCLBA-funded activities. The emphasis is on experimental research, particularly randomized controlled trials (RCTs).⁷⁸

⁷³ Although some states report having difficulty finding enough qualified staff for the program. (Kathleen Kennedy Manzo, "States Report Reading First Yielding Gains," *Education Week*, June 8, 2005.)

⁷⁴ The CEP report is based on state and district surveys and case studies conducted for its 2005 study on the No Child Left Behind Act, an overview of all state Reading First applications, an in depth review of 15 randomly selected state applications, and a review of revisions to state applications based on 10 representative states.

⁷⁵ DIBELS is the *Dynamic Indicators of Basic Early Literacy Skills*.

⁷⁶ Both publications were produced by the University of Oregon.

⁷⁷ Scott, Caitlin Scott and Tom Fagan, *Ensuring Academic Rigor or Inducing Rigor Mortis? Issues to Watch in Reading First*, Center on Education Policy (Washington, D.C.: 2005).

⁷⁸ For an in depth discussion of RCTS, see CRS Report RL33301, *Congress and Program Evaluation: An Overview of Randomized Controlled Trials (RCTs) and Related Issues*, by Clinton Brass, Blas Nunez-Neto, and Erin Williams. Some authors argue that in the context of encouraging basic educational research, SBR must be interpreted more broadly, in contrast to the more prescriptive definition of SBR contained in the NCLBA, "narrowly conceived for service providers trying to justify their use of federal dollars." Margaret Eisenhart and Lisa Towne, "Contestation and Change in National Policy on 'Scientifically Based' Education Research," *Educational Researcher*, vol. 32, Oct. 2003.

Programs in the NCLBA affected by the requirement that funded educational interventions be based on SBR include Title I, Part A, grants for the education of the disadvantaged, Reading First, Early Reading First, Even Start, Literacy Through School Libraries, Comprehensive School Reform, Improving Teacher Quality State Grants, Mathematics and Science Partnerships, English Language Acquisition State Grants, and Safe and Drug-Free Schools and Communities. This discussion focuses on the application of SBR to the Reading First program.

The NCLBA language authorizing Reading First makes clear that the intent of the program is to require recipients of Reading First funds to implement programs which are based on scientifically based reading research (SBRR). ED's application of SBRR to the Reading First program draws extensively on the work conducted by the National Reading Panel (NRP). In 2000, the NRP issued a report titled: *Teaching Children to Read*. The NRP was convened by the National Institute of Child Health and Human Development (NICHD) in consultation with ED in response to a congressional charge to review the literature on reading and use it to assess the effectiveness of different techniques for teaching reading, and whether these techniques were ready to be applied to classroom settings. Based on the NRP's research, the NCLBA incorporated five essential components of reading as requirements for reading instruction funded under the Reading First program. These essential components are defined in the NCLBA as "explicit and systematic instruction in — (A) phonemic awareness; (B) phonics; (C) vocabulary development; (D) reading fluency, including oral reading skills; and (E) reading comprehension strategies."⁷⁹

Implementation Issues.

Criticisms of the Application of Scientifically Based Reading Research to the Reading First Program. Some criticisms have been raised regarding ED's application of SBRR to the Reading First Program. For example, Robert Slavin, of the Success for All Program, has argued that the NCLBA's requirement that interventions be based on SBR does not differentiate between programs that have themselves been rigorously evaluated and those programs that have not been rigorously evaluated for efficacy, but can cite SBR that supports their interventions. The Success for All Foundation argues in a letter to the Office of the Inspector General of the U.S. Dept. of Education (OIG), that ED has inappropriately narrowed the definition of scientifically based research in its implementation of the Reading First program:

In essence, through the implementation of Reading First, the U.S. Department of Education has narrowed the definition of SBRR to the five "essential components" of reading as identified by the National Reading Panel. Research on program efficacy has been ignored. Because Reading First was so closely managed by the U.S. Department of Education, and because it contains such a strong focus on the use of scientifically based research, it is paving the way for how states, districts and schools are coming to understand the meaning of SBR,

⁷⁹ P.L. 107-110, Section 1207. [20 U.S.C. 6367]. CRS Report RL32145, *Early Intervention in Reading: An Overview of Research and Policy Issues*, by Gail McCallion.

and how they will apply it to other Federal programs.⁸⁰

As a consequence of the alleged “narrowing” of the definition of SBRR, states have been unnecessarily limited in their choices of reading programs, assessments and professional development packages, according to critics of ED’s implementation of Reading First.

Limitations of Existing Research. Some of the controversies that have surrounded implementation of SBRR in the Reading First program reflect the current state of SBRR and the difficulties of applying existing research to concrete educational interventions. Some observers have noted that there are many areas of education research with few if any RCT studies to draw upon.⁸¹

Some have argued that navigating the existing array of resources is difficult for states and LEAs because much of the research is academic. In addition, although there is more user-friendly material available than ever before, evaluations of the application of SBRR to concrete educational interventions is still very limited, and there is no single federal website or resource that currently catalogs and evaluates all the available user-friendly resources. The following discussion summarizes some of the resources that are currently available.

Identifying Relevant Resources. There are a variety of federally funded offices and resources that provide information, and/or technical assistance offering guidance more broadly on SBR, including SBRR, to states and LEAs. There are also guides intended to provide user-friendly information on SBR, that states and LEAs can access through ED websites and publications. Online resources include a NCLBA website with information on SBR and related resources, a searchable ERIC database on education research, and access to educational statistics and National Assessment of Educational Progress (NAEP) data on ED’s National Center for Educational Statistics website.⁸² The Institute of Education Sciences (IES) has made publications and other resources available on SBR. In December of 2003 IES published a report titled: *“Identifying and Implementing Educational Practices Supported by Rigorous Evidence: A User Friendly Guide.”*

In addition, ED has awarded 20 five-year grants to new comprehensive centers to provide advice to states and LEAs on meeting the requirements of the NCLBA. There are also ten regional centers with functions defined in the Education Sciences Reform Act of 2002.⁸³

⁸⁰ Robert Slavin, *Letter to U.S. Department of Education*, The Success for All Foundation, May 27, 2005.

⁸¹ Lynn Olson, “Law Mandates Scientific Basis for Research,” *Education Week*, Jan. 30, 2002.

⁸² See [<http://www.ed.gov/nclb>], [<http://www.ed.gov/about/pubs/intro/pubdb.html>], and [<http://www.nces.ed.gov>], sites visited Apr. 14, 2006.

⁸³ The mission of the regional centers includes serving regional needs, disseminating SBR, providing professional training and technical assistance, and responding to the needs of (continued...)

These resources are, however, not all centralized in one location, and relatively few provide analysis of specific educational instruction or assessment packages that might meet the SBR requirements of the NCLBA. It can be difficult for states and LEAs to sift through the volume of information that is available and find what they need to choose effective curriculum and assessment programs.

ED's IES created a What Works Clearinghouse (WWC) to address this need for clear, user-friendly information on SBR including evaluations of specific educational interventions.⁸⁴ The WWC intends to publish reviews of educational interventions that have SBR to back up their efficacy claims on education topics that the WWC has identified as priorities. To date, the WWC has only completed one topic report — on curriculum-based interventions for increasing K-12 math achievement. In May, the WWC modified its website to include new intervention reports. These reports have been introduced so that as much useful information as possible (even if it does not fully meet WWC standards of evidence) can be made available. The information provided in intervention reports includes program descriptions, costs of implementing the programs, and ratings of program effectiveness — including a category of “potentially positive” for promising results from small studies that may not be able to demonstrate statistically significant results. The first WWC intervention report reviewed four programs on character education. The WWC anticipates publishing additional reports in the near future.

Local Control. Perhaps in part because of the difficulties in finding specific information on SBRR based educational interventions that meet the requirements of the NCLBA, many states have chosen to rely upon a limited number of instructional, assessment and professional training programs. This has raised concerns by some about what they call the “overprescriptiveness” of ED’s application of SBRR to Reading First and the potential infringement on states’ and LEAs’ ability to choose curricula. Some argue that this “overprescriptiveness” is not consistent with section 9527 of the No Child Left Behind Act.⁸⁵

The CEP study discussed earlier in this report did find that states were “remarkably consistent” in their choice of programs. For example, the CEP study found that many states were required to revise their initial application for Reading First before it was accepted. CEP found that in their final accepted applications,

⁸³ (...continued)

stakeholders to ensure the academic success of all students. *Responding to Regional Needs and National Priorities*, Regional Educational Laboratories, 2004 Annual Report.

⁸⁴ See [<http://www.whatworks.ed.gov>], visited June 19, 2006.

⁸⁵ This section states: “(a) GENERAL PROHIBITION — Nothing in this Act shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school’s curriculum, program of instruction, or allocation of State or local resources, or mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under this Act. (B) PROHIBITION ON ENDORSEMENT OF CURRICULUM — Notwithstanding any other prohibition of Federal law, no funds provided to the Department under this Act may be used by the Department to endorse, approve, or sanction any curriculum designed to be used in an elementary or secondary school.” (Elementary and Secondary Education Act of 1965, Section 9527.)

almost all states used DIBELS for their required assessments and the *Consumer's Guide* to evaluate and choose a reading curriculum. Additionally, the CEP study found that state recommendations of specific reading programs appear to have influenced districts' choice of reading programs. The survey of districts receiving Reading First funds found that half changed the reading programs used by the district to qualify for a grant from their state.

In addition, The Reading Recovery Council of North America has submitted a complaint to ED which, among other things, contends that ED has infringed on state and local control to select curricula through its nonregulatory guidance and discussions with state officials, which, Reading Recovery argues, effectively excludes LEAs from using Reading First funds for one-to-one tutoring interventions, like Reading Recovery.⁸⁶

Advocates of Reading First believe that the program needs to be prescriptive in order to produce significant results. They argue that the success of Reading First will be in large part attributable to its strict requirement that programs implemented with Reading First funds be supported by scientifically based research: "Advocates have long argued that 'entitlement' programs like Title I failed to improve reading scores because of a lack of quality control on how the money was spent."⁸⁷

Three groups representing different reading programs have filed separate complaints with ED's Office of Inspector General (OIG), asking that the program be investigated. The OIG is currently conducting an investigation of the Reading First program. The OIG will reportedly be examining the state application process and the role of consultants and technical advisors to the program. The investigation is expected to take approximately one year.⁸⁸ The three groups that have filed complaints are: Dr. Cupp's Readers and Journal Writers, Success for All, and the Reading Recovery Council of North America. On September 23, 2005, the Senate Committee on Health, Education, Labor and Pensions submitted a letter to the Government Accountability Office (GAO) requesting an investigation of questions related to the implementation of the Reading First program.

⁸⁶ The Reading Recovery Council of North America, "Evidence Ignored, Learning Denied: The Attack on Reading Recovery", submitted to the Inspector General's Office of the U.S. Department of Education, (March 2006), available at [<http://www.readingrecovery.com>], visited Apr. 14, 2006.

⁸⁷ Andrew Brownstein and Travis Hicks, "Reading First Under Fire," *Title I Monitor*, Education Funding Research Council, (Thompson Publishing Group, Sept. 2005), p. 4.

⁸⁸ *Ibid.*

Section 8. Parental Involvement Requirements⁸⁹

Requiring or encouraging parents' involvement in decisions affecting the education of their children and in their actual education has been a long-standing goal of the Elementary and Secondary Education Act (ESEA). One of the purposes of the No Child Left Behind Act (NCLBA) was to continue and expand certain aspects of ESEA parental involvement provisions, for example by requiring that parents receive information on school performance. As the House committee report on H.R. 1 (the originating bill of NCLBA in the House) points out,

... the No Child Left Behind Act of 2001 expands upon current provisions of the Elementary and Secondary Education Act, which require schools to collect and report to the public information on the academic quality of Title I schools, in order to empower parents with information about their schools. Reporting this information is crucial to empowering parents to hold schools accountable and getting them involved, and helping fix schools that fail and choose another public school if their child's school fails.⁹⁰

Most of the ESEA parental involvement requirements are contained in Title I, Part A and are linked to local educational agencies (LEAs) and schools receiving Title I, Part A funding.⁹¹ As a result, most of this section dwells on Title I, Part A parental involvement requirements. However, examples of other, non-Title I, Part A requirements are mentioned.

ESEA Title I, Part A Requirements

Increasing the involvement of parents in the education of their educationally disadvantaged children has been a stated goal of ESEA Title I, Part A, since the beginning of the program in 1965. For many years, representative advisory committees of parents at the school and LEA level were a major, concrete aspect of these parental involvement requirements. The statutory requirement for these committees was dropped under the Education Consolidation and Improvement Act of 1981, although some schools and LEAs have continued to support such committees at their own discretion. The parental advisory committee requirement was dropped, in part, in response to program studies that found the role and authority of the committees to be ambiguous, leading to occasional tension between parent groups and school administrators.⁹²

The relatively numerous current ESEA Title I-A statutory requirements for

⁸⁹ This section was written by Richard N. Apling and Wayne C. Riddle.

⁹⁰ H.Rept. 107-63, p. 275.

⁹¹ The vast majority of LEAs qualify for Title I-A funding. Only those with very few poor children (fewer than 10) or very low poverty rates (under 2%) fail to qualify. However, only about 60% of all public schools receive Title I-A funding.

⁹² See U.S. Office of Education, *Compensatory Education Study, A Final Report from the National Institute of Education*, Chapter IV, 1978.

parental involvement⁹³ are summarized below. They include many broad statements about the importance of parental involvement activities and their effective implementation, but comparatively few concrete requirements. Many of the specific requirements deal more with notification of parents than with more active forms of involvement, or specific authorities or rights for parents. Of the latter, several apply only to parents of limited English proficient pupils assigned to language instruction programs funded under Title I-A.

Section 1118, “Parental Involvement”. Many, but by no means all, of the relevant Title I-A requirements may be found in Section 1118. Section 1118(a) requires all LEAs receiving grants under Title I-A to have a *written policy on parental involvement*, prepared jointly with parents of pupils participating in the program. Among other provisions, the policy must: describe how the LEA will involve parents in the development of the overall LEA plan for Title I-A (Section 1112), and in school identification and improvement procedures (Section 1116); support school-level efforts to implement parental involvement activities; coordinate parental involvement activities under Title I-A with those of other relevant federal programs;⁹⁴ and conduct an annual evaluation of the effectiveness of the LEA’s parental involvement activities in improving the quality of schools receiving Title I-A funds.

Similarly, each *school* participating in Title I-A must have a *written policy on parental involvement*. Schools as well as LEAs may substitute parental involvement policies applicable to *all* parents of pupils in the school for specific Title I-A policies in meeting these requirements.

Each LEA participating in Title I-A is required to reserve at least 1% of its grant for parental involvement activities, with at least 95% of these funds distributed to individual Title I-A schools. However, if 1% of the LEA’s Title I-A grant would be equal to \$5,000 or less, then this requirement does not apply.

Schools participating in Title I-A are required to convene at least one annual meeting to which parents of participating pupils are to be invited, to explain the program’s requirements and the right of parents to be involved. Participating schools must also offer to parents a “flexible number” of additional meetings, including “regular meetings” to participate in decisions relating to the education of their children, if requested by parents. Participating schools must involve parents in planning, improvement, and review of Title I-A programs, and provide to them information on the curricula and assessments used at the school.

More specifically, each participating school is to develop a *school-parent compact* of shared responsibilities to improve student achievement. The compact is

⁹³ Current non-regulatory guidance on the Title I-A parental involvement requirements may be found at [<http://www.ed.gov/programs/titleiparta/parentinvguid.pdf>], visited Apr. 14, 2006.

⁹⁴ These include the Reading First program and the Even Start program (see below for discussions of the parental involvement requirements for these ESEA programs) as well as Head Start, which is not an ESEA program.

to: describe the responsibilities of the school and parents for activities to support children's learning; and provide for communication through parent-teacher conferences held at least annually for elementary school pupils, frequent reports to parents on their children's progress, and "reasonable" access for parents to school staff and opportunities for classroom observation.

Participating schools and LEAs are further required to "build capacity" for parental involvement through activities such as: helping parents understand state academic content and pupil performance standards and how to help their children meet them; providing materials and training to parents to help them work with their children; educating teachers and other school staff in the value of parental involvement activities; providing literacy training to parents using Title I-A funds, if necessary and other sources of funding are unavailable; and providing transportation and child care in order to facilitate participation in parent involvement activities. In addition, LEAs *may* establish a district wide parental advisory council.

All of the parental involvement activities supported or required under Section 1118 are to be provided, "to the extent practicable," in a format and language that is accessible to parents with disabilities, with limited English proficiency, or who are migratory. In states where Parental Information and Resource Centers⁹⁵ are located, LEAs and schools are to inform the parents of participating pupils about these Centers and the services they provide. State educational agencies (SEAs) are to review LEA parental involvement policies to assure that they meet the requirements of Section 1118.

Significant Title I-A Parental Involvement Requirements Outside Section 1118. There are a number of important parental involvement provisions in portions of ESEA Title I-A other than Section 1118. *First*, under Section 1111(d), state plans for Title I-A must include information on how the SEA will collect and disseminate information on effective parental involvement practices, based on the "most current research."

Second, as discussed in Section 4 of this report, under Section 1111(h)(2), states and LEAs participating in Title I-A must report assessment results and certain other data to parents and the public through *report cards*. States are to publish report cards for the state overall, and LEAs (including charter schools which are treated under state law as individual LEAs) are to publish report cards for the LEA and individual schools. The report cards must generally include information on pupils' academic performance disaggregated by race, ethnicity, and gender, as well as disability, migrant, English proficiency, and economic disadvantage status. The report cards must also include information on pupil progress toward meeting any other educational indicators included in the state's adequate yearly progress (AYP) standards, plus secondary school student graduation rates, the number and identity of any schools failing to meet AYP standards, and aggregate information on the qualifications of teachers. The report cards *may* include additional information, such as the extent and type of parental involvement in schools, average class size, or the

⁹⁵ Parental Information and Resource Centers are funded by IDEA grants and run by parent organizations to provide training and information to parents of children with disabilities.

incidence of school violence. LEA and school report cards are to be disseminated to parents of public school pupils and to the public at large; there are no specific provisions regarding dissemination of the state report cards.

Third, under Section 1111(h)(6), “Parents Right-To-Know,” the parents of any pupil attending a school participating in Title I-A must be provided, upon request, with *information on the professional qualifications of their child’s teachers*. The information provided must include whether the teacher meets state licensing criteria for the grades and subject areas they teach; whether any such criteria have been waived for the teacher; and the postsecondary degree(s) held by the teacher, including their major area(s) of study. The qualifications of any paraprofessionals who serve their child must be provided to parents, upon request, as well. In addition, participating schools are required to provide to each parent information on the performance of their child on state academic assessments, and to notify parents if their child is taught for four or more consecutive weeks by a teacher who is not “highly qualified.”⁹⁶

Fourth, under Section 1112(g), Local Educational Agency Plans, LEAs using Title I-A funds to provide a *language instruction program for limited English proficient (LEP) pupils* must notify the parents of the pupils served by this program within 30 days of the beginning of the school year (or within two weeks if identification occurs during the school year).⁹⁷ The parental notification must include the basis for identifying their child as LEP, including the assessment method and the child’s level of English proficiency; the instructional methods that will be used in the language instruction program, as well as other programs that might be available; the exit requirements of the language instruction program; how the program meets the objectives of the individualized education program of the child (if the child has a disability); and information on the rights of the parents to remove their child from the program, and to receive guidance on the selection of alternative language instruction programs. In addition, a school that is using Title I-A funds to provide a language instruction program for LEP pupils, and that fails to meet the annual measurable achievement objectives specified under ESEA Title III, Section 3122,⁹⁸ must separately notify the parents of participating pupils within 30 days of such failure.

Section 1112(g)(4) also includes a separate series of parental participation requirements applicable specifically to parents of pupils receiving language instruction for LEP pupils funded under Title I-A. These essentially duplicate some of the provisions in Section 1118 applicable to the parents of all participating pupils (e.g., outreach to inform parents how they may help their children meet state academic content and achievement standards, or holding meetings with parents),

⁹⁶ For the definition of “highly qualified” teacher under the ESEA, see Section 6 of this report.

⁹⁷ There are virtually identical requirements for LEAs and other eligible entities using funds under ESEA Title III (Language Instruction for Limited English Proficient and Immigrant Students) “to provide a language instruction educational program” (§3302).

⁹⁸ For information on these objectives, see Section 6 of this report as well as CRS Report RL31315, *Education of Limited English Proficient and Recent Immigrant Students: Provisions in the No Child Left Behind Act of 2001*, by Jeffrey J. Kuenzi.

though with a specific emphasis on helping pupils attain proficiency in English. In addition, Section 1112(g)(5) prohibits the admission to, or exclusion from, any federally-assisted education program on the basis of a pupil's surname or language minority status.

Fifth, under Section 1116(b)(6), LEAs are required to inform *parents of all pupils attending a school that has been identified for improvement, corrective action, or restructuring* under Section 1116 — i.e., the school has failed to meet AYP standards for two or more consecutive years.⁹⁹ The notice is to include the reasons for and an explanation of the identification; how the school's performance compares to that of other schools in the LEA and state; an explanation of actions being taken in response to the identification, and how parents can become involved in these activities; and an explanation of the parents' right to transfer their child to another public school or, where relevant, to obtain supplemental educational services for their child. Similarly, under Section 1116(c)(6), SEAs must inform parents when the LEA serving their child has been identified for improvement (fails to meet AYP standards for LEAs for two or more consecutive years), the reasons for the identification, and how parents can become involved in improving the LEA's instructional programs. Similarly, under Section 1116(C)(10)(E), SEAs must inform parents of all children attending schools of an LEA that has been identified for corrective action (may be taken any time after identification of the LEA for improvement, but must be taken after four consecutive years of failing to meet AYP standards for LEAs).

Examples of Other ESEA Parental Involvement Requirements

As noted above, Title I-A has the most extensive ESEA requirements for parental involvement. At the same time, other programs authorized under the ESEA require some form of parental involvement or permit funds to be spent on parental involvement activities. The following are some examples.

- *The Reading First program (Subpart 1 of ESEA Title I-B).* As discussed in Section 7 of this report, the Reading First program aids programs “based on scientifically based reading research” for pupils in kindergarten through 3rd grade. Section 1202(c)(7)(B) permits LEAs to use funds for certain family literacy programs and to provide training and assistance to parents to encourage their children to read.
- *The William F. Goodling Even Start Family Literacy Programs (Subpart 3 of ESEA Title I-B).* This program supports efforts to integrate “early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program ...” (§ 1231(1)) In general, Even Start funds support “intensive family literacy services that involve parents and children, from birth through age 7, in a cooperative effort to help parents become full partners in the education of their children and to assist children in reaching their full potential as learners.” (§ 1234(a))

⁹⁹ For more information, see Section 4 of this report.

- *Parental notification requirements under Language Instruction for Limited English Proficient and Immigrant Students (§3302).* As noted above, LEAs and other eligible entities using funds under ESEA Title III must notify parents of limited English proficient pupils of certain information and rights. Among these are the reasons why their child has been identified as needing a language instruction educational program and the parents' rights to decline enrolling their child in such program and to withdraw their child from the program if services have already started.
- *Parental consent regarding armed forces recruiter access to student information (ESEA §9528(a)(2)).* The ESEA, as amended by the NCLBA requires LEAs receiving assistance under ESEA to provide secondary school students' names, addresses, and telephone numbers to military recruiters.¹⁰⁰ This section further provides that the student or the parent of the student may request that this information "not be released without prior written parental consent," that the LEA notify parents of this option, and that the LEA comply with the parent's written request.¹⁰¹

Implementation Issues

National studies on the implementation of current parental involvement provisions are not yet available. It is possible that such studies may find some issues similar to those found by past national studies. For example, the most recent published ESEA Title I-A evaluation that focused, in part, on the impact of the parental involvement provisions was "Promising Results, Continuing Challenges: The Final Report of the National Assessment of Title I," published by the Department of Education's Planning and Evaluation Service in 1999.¹⁰² Chapter 7 of this report reviews the parental involvement provisions of Title I-A, particularly those that were newly adopted in the 1994 reauthorization of the ESEA (the Improving America's Schools Act). These provisions included the requirements (described above) for school-parent compacts and, in most cases, the reservation of at least 1% of LEA Title I-A grants for parental involvement activities. This report chapter also provides a review of research on the importance and effects of increased parental involvement in relatively high poverty schools.

Key findings of this study included the following:

- The staff at a high proportion of schools, especially schools with the highest poverty rates among pupils' families, found the school-

¹⁰⁰ Without this provision, LEAs would be prevented from providing such information under §444 of the General Education Provisions Act (GEPA).

¹⁰¹ For more information see Section 9 of this report.

¹⁰² Available at [<http://www.ed.gov/rschstat/eval/disadv/promisingresults/natirpt.pdf>], visited Apr. 14, 2006.

parent compacts to be helpful in promoting desired behaviors among pupils, such as homework completion. However, only 75% of a representative sample of Title I-A schools had actually implemented this provision.

- Overall, parents remained less involved with their children's Title I-A schools than is desirable. Major obstacles to increased involvement included a failure of many schools to offer outreach and assistance to parents, lack of time on the part of both school staff and parents, and lack of education on the part of parents of children attending high poverty schools.
- School staff found there to be substantial overlaps and duplication in the parental involvement requirements of multiple federal programs.
- In many cases, parents were not receiving the desired level or types of information from school "report cards."¹⁰³

Information from some education advocacy groups suggest that similar implementation issues are still relevant. In a press release announcing an open letter to President Bush and Secretary of Education Spelling, the Public Education Network (PEN) maintained that

[i]n most school districts parents reported having met resistance from school officials when they tried to get involved, and 75 percent of survey respondents had not been involved in any NCLB-related activity. By enforcing provisions already in the law, the federal government can send a strong signal to states and school districts that parents can and should be active partners in school improvement, and can build public ownership of the schools.¹⁰⁴

Another press release, issued jointly by PEN and Campaign for Fiscal Equity, Inc. (CFE), reported on testimony by parents in the New York City area. Among other concerns, PEN and CFE reported that

[p]arents expressed frustration over the lack of communication and timely information from schools about school performance and services available to students. While NCLB requires reporting of school and student performance through annual report cards, parents testified that school information rarely reaches parents, and when it does, it is often late and difficult to understand. In particular, parents expressed the need for timely information about supplemental educational services and recommended that school data be made available in multiple languages. Parents also testified that they often feel unwelcome by administrators at the school and district levels, making it difficult for them to get

¹⁰³ It should be noted that this report was published before enactment, under the No Child Left Behind Act of 2001, or implementation of the school and LEA report card requirements discussed earlier in this memorandum.

¹⁰⁴ "American Public Calls on Bush Administration, Congress To Strengthen Public Information & Involvement in NCLB & To Hold States Accountable for Progress," press release from the Public Education Network, Mar. 16, 2005, available at [http://www.publiceducation.org/doc/press_releases/march16_2005.doc], visited Apr. 14, 2006.

involved.¹⁰⁵

Since one rationale for current parental involvement provisions is to “empower” parents so that they can influence school improvement, a central implementation issue is the degree to which parents’ involvement improves schools and improves student achievement. The *Washington Post* reported on a recent study based on data from 257 California elementary schools with high numbers of low-income pupils. The study found that parent involvement is positively correlated with student achievement. However, the study also found that other factors (most of which are also emphasized in current law), such as emphasizing student achievement, aligning curriculum with state academic standards, and providing experienced teachers and principals, are more highly correlated with achievement test scores.¹⁰⁶

¹⁰⁵ “New Yorkers Speak Out on No Child Left Behind Act Bring Community Voice to Federal Law,” press release from Public Education Network and Campaign for Fiscal Equity, Inc., Sept. 30, 2005, available at [http://www.publiceducation.org/pdf/NCLB/hearings/NY_News_Release.pdf], visited Apr. 14, 2006.

¹⁰⁶ The study was led by the nonprofit EdSource group in Mountain View, CA. (“Parents’ Effect on Achievement Shaky,” *Washington Post*, Nov. 22, 2005, p. A10.)

Section 9. Military Recruitment at Secondary Schools¹⁰⁷

The Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLBA; P.L. 107-110), contains several provisions requiring local educational agencies (LEAs) receiving funding under the ESEA to provide military recruiters with the same access to secondary school students as they provide to institutions of higher education (IHEs) or prospective employers (Section 9528).¹⁰⁸ Upon request by military recruiters or IHEs, LEAs receiving ESEA funding must provide access to secondary school students' names, addresses, and telephone numbers, unless a parent or the student has opted out of providing this information. In addition, LEAs receiving ESEA funding must provide military recruiters with the same access to secondary school students as is provided to postsecondary institutions or prospective employers. For example, if postsecondary institutions are permitted to come to the school to provide information to students about their programs, military recruiters must be afforded the same opportunities. Failure to meet these requirements may result in the loss of ESEA funding. An exception to these requirements may be granted, however, to a private secondary school that maintains religious objections to military service.

Under the Family Educational Rights and Privacy Act (FERPA), LEAs are generally required to obtain written consent from parents prior to disclosing personally identifiable information from a child's education records. However, LEAs are permitted to disclose data designated as "directory information" without prior written consent, unless a parent or the student has specifically asked the LEA not to release the information.¹⁰⁹ Under FERPA, directory information, such as students' names and addresses, may be provided to outside organizations, such as yearbook publishers and military recruiters, if the LEA chooses to do so. FERPA does require an LEA to notify parents about the types of student information the LEA releases publicly. This notice must include an explanation of a parent's right to request that directory information not be disclosed to a third party without prior written consent. LEAs must notify parents that they routinely disclose the names, addresses, and

¹⁰⁷ This section was written by Rebecca R. Skinner.

¹⁰⁸ Similar requirements are also contained in 10 U.S.C. Section 503, as amended by Section 544 of the National Defense Authorization Act for Fiscal Year 2002 (P.L. 107-107). While there are some differences between this provision and those contained in the ESEA, both statutes are designed to accomplish the same goal. The provisions authorized by NCLBA and 10 U.S.C. 503 are unrelated to similar provisions at the postsecondary level which require colleges and universities that receive federal funds to allow military recruiters on campus. The requirements at the postsecondary level are commonly referred to as the Solomon Amendment. For more information on the Solomon Amendment, see CRS Report RS22405, *Military Recruiting and the Solomon Amendment: The Supreme Court Ruling in Rumsfeld v. FAIR*, by Charles V. Dale.

¹⁰⁹ Directory information is information that is generally not considered harmful or an invasion of privacy if released. (U.S. Department of Education, October 9, 2002, "Family Educational Rights and Privacy Act (FERPA) Model Notice for Directory Information," available online at [<https://www.ed.gov/policy/gen/guid/fpco/hottopics/ht10-09-02a.html>], visited Apr. 14, 2006.)

telephone numbers of secondary school students to military recruiters, unless a parent has requested that such information not be distributed without written consent. Parents must be notified about how to opt out of the public disclosure of directory information, including the process for doing so and associated deadlines.¹¹⁰ It should be noted that, under ESEA Section 9528, even if an LEA does not disclose any directory information to any third parties, it is still required to provide military recruiters with access to secondary students' names, addresses, and telephone numbers. Parents must be notified of their option to opt out of this disclosure of information, as well.

Implementation Status. The Department of Defense (DOD) has developed a national high school data base to track whether military recruiters are provided with access. As of fall 2002, 95% of approximately 22,000 secondary schools in the United States provide military recruiters with student access that is in compliance with statutory requirements.¹¹¹ In an interview about military recruiters and high school access that took place in spring 2003, a spokeswoman for the DOD indicated that there were only six high schools that they were aware of that were not providing access to military recruiters.¹¹² Even prior to the passage of the NCLBA, military recruiters generally had access to high schools with only 12% of high schools denying recruiters access to students' directory information.¹¹³

Implementation Issues. While there has been general compliance with requirements that high schools grant access to military recruiters, there has also been confusion and controversy over the implementation of the requirements.¹¹⁴ According to the U.S. Department of Education (ED), two areas of concern have

¹¹⁰ An LEA may provide a single notice that informs parents about the types of information that are publicly released, public disclosure of student information to military recruiters, and process for requesting that information not be disclosed without prior written consent. (U.S. Department of Education, Oct. 9, 2002, "Policy Guidance - Access to High School Students and Information on Students by Military Recruiters," available online at [<http://www.ed.gov/policy/gen/guid/fpco/hottopics/ht-10-09-02a.html>], visited Apr. 14, 2006.)

¹¹¹ U.S. Department of Education, Oct. 9, 2002, "Policy Guidance - Access to High School Students and Information on Students by Military Recruiters," available online at [<http://www.ed.gov/policy/gen/guid/fpco/hottopics/ht-10-09-02a.html>], visited Apr. 14, 2006.

¹¹² Ibid.

¹¹³ "Military Recruiters Meet Pockets of Resistance," *Education Week*, Apr. 23, 2003. Also see "Military Faces Parental Counterattack: High School Recruitment, a Longtime Tradition, Raises Worries in Wartime," *Washington Post*, Nov. 1, 2005,

¹¹⁴ There are also related legal concerns. For example, critics of the policy have questioned whether the provisions violate a student's right to privacy. For more information on legal issues related to the military recruitment policy, see CRS Report RS22362, *Military Recruitment Provisions Under the No Child Left Behind Act: A Legal Analysis*, by Jody Feder.

focused on the application of 10 U.S.C. Section 503 and the “opt out” provision.¹¹⁵ Similar requirements for the release of student information are included in 10 U.S.C. Section 503, as amended by Section 544 of the National Defense Authorization Act for Fiscal Year 2002 (P.L. 107-107). Under 10 U.S.C. Section 503, the governing body of an LEA (e.g., school board) could vote to have a policy to deny military recruiters access to students or students’ “directory information.” The ESEA requirements on providing access to military recruiters do not include this policy exemption. Thus, while denying access to military recruiters would be permitted under 10 U.S.C. Section 503 and not subject the LEA to any sanctions,¹¹⁶ the action would violate the statutory requirements of the ESEA and the LEA could be subject to sanctions by ED.

The second major issue, according to ED, focuses on compliance with the provision specifying that a secondary school student or the parent of the student may request that directory information not be released without prior written parental consent.¹¹⁷ According to ED, this provision has been “misapplied” by LEAs that require written parental consent before they will provide information to military recruiters; thereby creating an “opt in” rather than an “opt out” policy. Statutory requirements do not permit LEAs to establish an “opt in” policy.

LEAs have interpreted the “opt out” provision in different ways in terms of what type of notification is provided, how a parent’s response to notification is interpreted, and whether they have actually implemented an “opt in” policy rather than an “opt out” policy. For example, some schools have provided a general notice to parents about their rights to opt out of the release of student directory information without mentioning how the information will be used, while other schools have issued more explicit notices informing parents that student information may be shared with military recruiters unless they opt out.

LEAs also have varied in their interpretation of parent responses to the opt out option. In some cases, a lack of response to the notification of the opportunity to opt out is interpreted as a willingness to have information released, while other LEAs interpret a lack of response as an indication that parents do not want to have their children’s information released.¹¹⁸ The latter interpretation requires parents to “opt in” to have information released.

Some parents and organizations have criticized schools for failing to make the

¹¹⁵ U.S. Department of Education, July 2, 2003, “Key Policy Letters Signed by the Education Secretary or Deputy Secretary,” available online at [<http://www.ed.gov/print/policy/gen/guid/secletter/030702.html>], visited Apr. 14, 2006.

¹¹⁶ Under 10 U.S.C. Section 503, within 120 days a senior military officer must visit an LEA failing to comply with the statutory requirements. If the access problem cannot be resolved, the state governor is notified. If after a year, the Secretary of Defense determines that the LEA is denying recruiting access to at least two of the armed forces, the issue is reported to Congress.

¹¹⁷ ESEA, Section 9528.

¹¹⁸ “Schools and Military Face Off; Privacy Rights Clash With Required Release of Student Information,” *Washington Post*, June 19, 2005.

opt out policy clearer to parents. For example, the National Parent-Teacher Association (PTA) is asking that statutory language be changed to require that parents provide explicit permission for military recruiters to access students' information.¹¹⁹ Some schools and school districts are examining their current policies on military recruiters.¹²⁰ For example, Tucson Unified School District in Arizona established a policy limiting military recruiters to one visit per month at each school in response to complaints received from parents about the number of days military recruiters were spending at schools.¹²¹ The Seattle school district is also re-evaluating its policy with respect to military recruiters after a parent-teacher-student association at a local high school passed a resolution stating that military recruiters were not welcome at the school.¹²²

¹¹⁹ "Military Faces Parental Counterattack: High School Recruitment, a Longtime Tradition, Raises Worries in Wartime," *Washington Post*, Nov. 1, 2005.

¹²⁰ "Schools and Military Face Off; Privacy Rights Clash With Required Release of Student Information," *Washington Post*, June 19, 2005.

¹²¹ "Recruiting in Schools, a Priority for Military, Is Targeted by Critics," *Education Week*, June 22, 2005.

¹²² Ibid. Also see "Schools and Military Face Off; Privacy Rights Clash With Required Release of Student Information," *Washington Post*, June 19, 2005.

Section 10. Participation of Children Enrolled in Private Schools¹²³

Under the ESEA, services are provided to private school students according to the “child benefit” model. Accordingly, children enrolled in private schools may benefit from publicly-funded services, yet funding for and the provision of these services remain under public control. Children enrolled in private elementary and secondary schools have been eligible to be served under the ESEA in some capacity since its inception in 1965.¹²⁴ The NCLBA made a number of amendments to the ESEA requirements applicable to the participation of children enrolled in private schools. The most significant changes address how services to eligible children must be arranged between LEAs and the private schools in which eligible children are enrolled; the specific programs under which services must be provided; and how the effectiveness of these services must be assessed. Also, in response to the U.S. Supreme Court’s ruling in *Agostini v. Felton*,¹²⁵ which permits ESEA funded services to be provided on the premises of private religious schools, ESEA Title I-A funding for capital expenses to support the provision of equitable services to private school students on neutral sites was terminated.

Private school students are eligible to be served under the following ESEA programs: Title I-A (Education for the Disadvantaged), Title I-B-1 (Reading First), Title I-B-3 (Even Start Family Literacy), Title I-C (Migrant Education), Title II-A (Teacher and Principal Training and Recruiting Fund), Title II-B (Mathematics and Science Partnerships), Title II-D (Enhancing Education Through Technology), Title III-A (English Language Acquisition, Language Enhancement and Academic Achievement), Title IV-A (Safe and Drug-Free Schools and Communities), Title IV-B (21st Century Community Learning Centers), Title V-A (Innovative Programs), and Title V-D-6 (Gifted and Talented Students). Under these programs, services typically are provided to private school students either directly by the LEA responsible for the geographic area in which a private school student resides, or by a third-party contractor. LEAs must consult with private school officials as they establish the terms according to which private school students will be served.

Key changes under the NCLBA to the requirements for the participation of children enrolled in private schools in ESEA programs include the following:

- Expanding the equitable participation requirement to apply to the teachers and families of eligible private school children with respect to services and activities developed pursuant to ESEA § 1118 (Parental Involvement) and § 1119 (Qualifications for Teachers and

¹²³ This section was written by David P. Smole.

¹²⁴ P.L. 89-10, § 205(a)(2).

¹²⁵ 521 U.S. 203 (1997). *Agostini v. Felton* overturned a previous ruling by the U.S. Supreme Court, *Aguilar v. Felton*, 473 U.S. 402 (1985), which had held that the provision of ESEA services to students in private religious schools by public school teachers necessitated an excessive entanglement between church and state in violation of the Establishment Clause of the First Amendment to the Constitution.

Paraprofessionals);¹²⁶

- Expanding the topics and strengthening the requirements according to which LEAs must consult with private school officials during the design and development of the ESEA programs under which they will serve private school children;
- Requiring documentation of private school officials' affirmation that required consultation with the LEA has taken place, and establishing procedures through which private school officials may raise procedural complaints through the SEA;
- Modifying the assessment provisions for Title I-A services to private school pupils to require that services be academically assessed, and that the results of these assessments be used to improve services; and
- Adding new requirements specifying how eligible private school children may be counted to ensure the provision of equitable services.

Implementation Status. Following the enactment of the NCLBA, the Department of Education issued ESEA Title I regulations in December 2002,¹²⁷ and non-regulatory guidance in October 2003,¹²⁸ that address the provision of Title I services to private school children. ED also issued non-regulatory guidance in August 2005¹²⁹ on the provision of services to private school children under ESEA programs covered under Title IX; and in August 2002 on the provision of services under Title V-A.¹³⁰ In implementing the ESEA, ED has taken steps to ensure that states and LEAs are adhering to the requirements to serve private school students. For example, ED's Student Achievement and Accountability (SASA) Programs Team has conducted compliance reviews of SEA implementation of NCLBA requirements — including those pertaining to the equitable participation of private school children.¹³¹ Also, ED's Office of Inspector General has conducted audits of LEA compliance with NCLBA requirements to provide equitable services to private

¹²⁶ This does not mean that the “highly qualified” requirements for teachers and paraprofessionals apply to private school staff.

¹²⁷ 34 CFR §§ 200.64-200.67.

¹²⁸ U.S. Department of Education, Office of Innovation and Improvement, Office of Non-Public Education, *Title I Services to Private School Children: Non-Regulatory Guidance*, Oct. 17, 2003.

¹²⁹ U.S. Department of Education, Office of Innovation and Improvement, Office of Non-Public Education, *Equitable Services to Eligible Private School Students, Teachers, and Other Educational Personnel: Non-Regulatory Guidance*, Aug. 2005.

¹³⁰ U.S. Department of Education, Office of Innovation and Improvement, *Guidance for Title V, Part A of the Elementary and Secondary Education Act, as reauthorized by the No Child Left Behind (NCLB) Act (State Grants for Innovative Programs)*, Aug. 2002.

¹³¹ U.S. Department of Education, Office of Elementary and Secondary Education, *Student Achievement and School Accountability Program (SASA) Monitoring Plan for Formula Grant Programs for October 1, 2005 to September 30, 2006*, (see item 3.3, Within District Allocation Procedures), available at [<http://www.ed.gov/admins/lead/account/monitoring/indicators0506.pdf>], visited Apr. 14, 2006.

school students.¹³² Data on the number of private school students served under ESEA programs are not yet available for periods since the enactment of the NCLBA. However, Title I-A data for 2001-2002 (the last year prior to implementation of NCLBA requirements) show that of 15,773,173 students served under Title I-A, only 195,556 (1.2%) were enrolled in private schools.¹³³

Implementation Issues. Participating LEAs have been required to provide equitable services to eligible private school students under the ESEA since 1965. However, despite both the long history of the program and the recent strengthening of the requirements for LEAs to consult with private school officials, it appears that timely consultation continues to remain a concern. In response, ED and many SEAs have highlighted the equitable participation requirements to address concerns about consultation and the availability of services.¹³⁴ The amount of funding available to serve eligible private school students also has been raised as a concern. This is due to the statutory requirement (addressed earlier) that LEAs reserve up to 20% of their Title I-A allocation to cover the costs of transportation for public school choice and supplemental educational services for students enrolled in public schools identified for improvement, corrective action, or restructuring. Depending on how LEAs pay for school choice transportation and supplemental educational services, this requirement may result in proportionally less funding being available for services to private school students than before enactment of the NCLBA, because private school students are not eligible for these services. In instances where equitable services are not provided to eligible private school students — either because of state constitutional prohibitions or the failure of LEAs to comply — the ESEA provides that the LEA may be “bypassed” and services provided through a third party. Bypass arrangements for ESEA programs are currently used in Missouri, Nebraska, and Virginia.

¹³² See for example, U.S. Department of Education, Office of Inspector General, 2004 Audit Reports, Office of Elementary and Secondary Education, *Detroit City School District's administration of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (the Act), Set-Aside programs for the period July 1, 2002, through May 31, 2003*, (ACN# A05D0021), available at [<http://www.ed.gov/about/offices/list/oig/areports2004.html>], visited Apr. 14, 2006.

¹³³ U.S. Department of Education, Office of Planning, Evaluation and Policy Development and Office of Elementary and Secondary Education, *State ESEA Title I Participation Information for 2001-2002: Final Summary Report* (Washington, D.C.: 2005), Table 10.

¹³⁴ “Private School Consultation Takes More Than Two Days’ Notice, ED Says,” *Title I Monitor*, vol. 8, no. 9 (Sept. 2003), pp. 1, 9-12.

Section 11. Unsafe School Choice Option¹³⁵

The NCLBA established a new Unsafe School Choice Option (USCO) policy under ESEA Title IX-E-2, § 9532. The USCO policy is administered by the U.S. Department of Education (ED), Office of Safe and Drug-Free Schools. Under the USCO policy, in order to be eligible to receive ESEA funding, states are required to establish statewide policies under which students who attend persistently dangerous public elementary or secondary schools, or who become victims of a violent crime while in or on the grounds of the public elementary or secondary schools they attend, must be offered the opportunity to transfer to another public school within the same LEA. Each year, states must certify their compliance with USCO requirements prior to receiving ESEA funding for the next year.

ED has issued non-regulatory guidance outlining the steps that states must take to comply with the USCO policy. These steps include the following:

- Establish a state USCO policy,
- Identify persistently dangerous schools,
- Identify types of offenses that are considered to be violent criminal offenses,
- Provide a safe public school choice option, and
- Certify compliance with USCO.¹³⁶

States are required to develop their USCO policies in consultation with a representative sample of LEAs within the state.

Implementation Status. States were required to implement the USCO beginning with the 2002-2003 school year. Each state's USCO policy is somewhat different. While most states establish some threshold number of violent offenses relative to school enrollment that must be exceeded for either two or three consecutive years in order for a school to be designated as persistently dangerous, the definitions of violent offenses or incidents measured tend to vary considerably across states. Typically, states' USCO policies identify which crimes or types of crimes constitute violent offenses, although these tend to differ from state to state. Some state policies reference primarily felony offenses (e.g., homicide, manslaughter, aggravated assault, or sexual assault). Others also reference violation of weapon possession laws (e.g., Gun-Free Schools Acts), or drug possession laws. Some state policies also consider student expulsions for offenses such as drug or alcohol possession, or violence.¹³⁷

¹³⁵ This section was written by David P. Smole.

¹³⁶ U.S. Department of Education, *Unsafe School Choice Option: Non-Regulatory Guidance*, May 2004, p. 6, available at [<http://www.ed.gov/policy/elsec/guid/unsafeschoolchoice.pdf>], visited Apr. 14, 2006. (A draft of this guidance was first issued in July 2002.)

¹³⁷ For a compilation of criteria used by the various states to identify persistently dangerous schools, see Education Commission of the States, *Persistently Dangerous School Criteria*, compiled by Gloria Zradicka, Sept. 2004, available at [<http://www.ecs.org/clearinghouse/>]
(continued...)

The U.S. Department of Education does not report national data on the number of schools designated by states as persistently dangerous, nor the number of students that transfer to a new school under the USCO policy. However, compilations of data reported by the states show that in the first three years of implementation, few schools have been identified as persistently dangerous. Data for 2003 through 2005 are presented in **Table 2**.

Table 2. Persistently Dangerous Schools Identified Under USCO Policy: 2003-2005

State	2003	2004	2005
Georgia			2
Maryland			6
Nevada	†		
New Jersey	7	10	4
New York	2		5
Oregon	1		
Pennsylvania	28	14	9
South Dakota		2	
Texas	†		2
Total	38	26	28

Sources: Erik W. Robelen, "States Report Few Schools As Dangerous," *Education Week*, Sept. 24, 2003, vol. 23, no. 4, pp. 1, 32-33; Lawrence A. Uzzell, "Cheat Sheets," *The American Spectator*, Sept. 2005, vol. 38, no. 7, pp. 26-30; John S. Gooden and Sonja Y. Harrington, "The Unsafe School Choice Option: A Snapshot," *Planning and Changing*, fall 2005, vol. 36, no. 3/4, pp. 133-146; Jay Matthews, "Our 26 Most Dangerous Schools and Other Fables," *The Washington Post*, Jan. 4, 2005; Kevin Carey, "The Eficense Suggests Otherwise: Hot Air: How States Inflate Their Educational Progress Under NCLB," *Education Sector*, May 2006, pp. 7-8; and state departments of education.

Notes:

†In preliminary reporting, Nevada and Texas identified 10 and six schools, respectively, as persistently dangerous. However, upon further review, no schools were so designated.

Scant information has been reported on the number of students transferring to different schools under the USCO policy. In a review of the implementation of the USCO policy, Gooden and Harrington (2005) found that in Pennsylvania during the 2003-2004 school year, 75 students in the Philadelphia school district transferred from the 27 schools identified as persistently dangerous, and 58 students transferred from the one school so identified in the Chester-Upland school district. It is difficult to draw conclusions about the USCO policy from this limited amount of information.

¹³⁷ (...continued)

52/98/5298.pdf], visited Apr. 14, 2006.

Implementation Issues. An examination by the Education Commission of the States (ECS) of states' implementation of USCO requirements reveals that by March 2004, nearly all states had established criteria for identifying unsafe schools, and had implemented policies under which students in unsafe schools and students who were victims of violent crimes could transfer to other public schools within the same LEA.¹³⁸ The U.S. Department of Education, Office of Inspector General (OIG), has examined five states for compliance with the USCO requirements and has found that, in general, four of these states (California, Georgia, Iowa, and New Jersey) are complying with the requirements of the law. (A common weakness identified in the audit findings of these four states was inconsistency in the implementation of the USCO by LEAs.) The OIG found that Texas had not adequately implemented the USCO policy at the state and LEA levels.¹³⁹

As presented in **Table 2**, relatively few schools have been identified as unsafe. However, school safety still remains an important concern for students and their families. For example, according to the National Crime Victimization Survey, in 2003, students ages 12-18 were victims of 750,000 violent crimes, of which 150,000 were serious violent crimes (rape, sexual assault, robbery, and aggravated assault).¹⁴⁰ Data reported for 2003 also show that 5% of students ages 12-18 reported being victims of crime while at school, with 1% being victims of violent crime.¹⁴¹ Also in 2003, 12% of male students and 6% of female students in grades 9-12 reported being threatened or injured with a weapon on school property within the past year.¹⁴² It appears that the small number of schools identified as persistently dangerous results in part from the high thresholds for identification set by many states, which often must be met for two or three consecutive years.

¹³⁸ Education Commission of the States, *ECS Report to The Nation: State Implementation of the No Child Left Behind Act, Indicator 4 — Safe Schools*, (2004), available at [http://www.ecs.org/html/Special/NCLB/ReportToTheNation/docs/Indicator_4.pdf], visited Apr. 14, 2006.

¹³⁹ U.S. Department of Education, Office of Inspector General, 2005 Audit Reports, Safe and Drug-Free Schools, (ACN#s: A09E0025, A04E0007, A07E0027, A03E0008, and A06E0028), available at [<http://www.ed.gov/about/offices/list/oig/areports.html>], visited Apr. 14, 2006.

¹⁴⁰ U.S. Departments of Education and Justice, *Indicators of School Crime and Safety: 2005* (NCES 2006 — 001/NCJ 210697), by J.F. DeVoe, K. Peter, M. Noonan, T.D. Snyder, and K. Baum (2005), p. 10, at [<http://nces.ed.gov/pubs2006/2006001.pdf>], visited June 19, 2006.

¹⁴¹ *Ibid.*, p. 14. (Based on data from the School Crime Supplement to the National Crime Victimization Survey.)

¹⁴² *Ibid.*, p. 16. (Based on data from the Youth Risk Behavior Survey.)